

1 KENNETH M. WEBSTER, ESQ.  
Nevada Bar No. 7205  
2 HALL PRANGLE & SCHOONVELD, LLC  
777 North Rainbow Blvd., Suite 225  
3 Las Vegas, Nevada, 89107  
(702) 889-6400 - Office  
4 (702) 384-6025 - Facsimile  
5 Attorneys for Summerlin Hospital

6 UNITED STATES DISTRICT COURT,  
7 DISTRICT OF NEVADA  
8

9 KATHLEEN SHINN and RICHARD SHINN,  
Individually, as Heirs and as Personal Co-  
10 Administrators of the Estate of ALYSSA  
SHINN, Deceased,

11  
12 Plaintiff,

13 vs.

14 BAXA CORPORATION; MCKESSON  
15 CORPORATION, a Delaware Corporation;  
DOES 1 through 50, and ROE  
16 CORPORATIONS 1 through 20;

Case No.: 2:07-CV-01648-JCM-PAL

**SUMMERLIN HOSPITAL MEDICAL  
CENTER'S SUPPLEMENT TO IT'S  
MOTION TO INTERVENE AND FOR  
DETERMINATION OF GOOD FAITH  
SETTLEMENT**

18 COMES NOW SUMMERLIN HOSPITAL MEDICAL CENTER, LLC, d/b/a  
19 SUMMERLIN HOSPITAL MEDICAL CENTER (hereinafter referred to as "Summerlin  
20 Hospital"), by and through its counsel of record, of the law firm of HALL PRANGLE &  
21 SCHOONVELD, and files its Supplement to its request for an Order allowing Summerlin  
22 Hospital to Intervene and simultaneously an Order Granting Good Faith Settlement between  
23 Summerlin Hospital and Plaintiffs for the settlement reached between Plaintiffs and Summerlin  
24 Hospital.  
25  
26  
27  
28

**POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**

On June 24, 2008 Baxa Corporation filed its Supplemental Response to Summerlin Hospital's Motion to Intervene and Motion for Determination of Good Faith Settlement. In that document Baxa alleges that Summerlin has thwarted their attempts to obtain documents "precluding Baxa from a fair and reasonable opportunity to challenge Summerlin's Motion". See Supplement Page 8, lines 10-11.

**II.**

**ARGUMENT**

**A. Summerlin Hospital has provided Baxa with the Excess Liability Indemnity Policy and is willing to provide an Affidavit regarding the self insured status of Summerlin Hospital.**

Counsel for Summerlin Hospital, Ken Webster, Esq., has been in trial in Utah for several weeks and in an attempt to provide Baxa with the information needed, David P. Ferrainolo, Esq., has stepped in to assist Mr. Webster and work with counsel for Baxa to provide the information needed. See Affidavit of David P. Ferrainolo attached as Exhibit "A".

On June 19, 2008 counsel for Summerlin, David P. Ferrainolo, spoke with counsel for Baxa, Nicholas M. Wieczorek, Esq., and was informed that as a result of a potential settlement between Baxa and the Shinns, that Summerlin Hospital did not have to produce all of the documents identified by Baxa in their May 19, 2008 correspondence to Kenneth Webster, Esq., except for the insurance policy for Summerlin Hospital and/or Baxa, in effect during the period in question. At that time, counsel for Summerlin explained that Summerlin Hospital was self insured and that there was no such insurance policy to produce. Counsel for Summerlin Hospital

1 verified that fact with Universal Health Services, Inc., and relayed said information to Mr.  
2 Wieczorek via telephone conference.

3 Understanding that counsel for Baxa wanted something in the form of an insurance  
4 policy, counsel for Summerlin obtained a copy of the Excess Liability Indemnity Policy for  
5 Universal Health services, Inc., in effect at the time of the incident, and agreed to produce said  
6 policy to Baxa. On June 26, 2008 Baxa was hand delivered a copy of the Excess Liability  
7 Indemnity Policy for Universal Health services, Inc., which covers Summerlin Hospital. See  
8 Exhibit "B".  
9

10 On June 26, 2008 counsel for Summerlin Hospital spoke to counsel for Baxa and  
11 explained that the policy being sent over was an excess policy and not the primary insurance  
12 policy as there is no such physical primary insurance policy. Counsel for Summerlin offered to  
13 have an Affidavit produced from Universal Health Services, Inc., reflecting the fact that  
14 Summerlin Hospital is self insured and as a result, no physical insurance policy exists. Counsel  
15 for Baxa indicated that said Affidavit was not necessary at this time, and as a result, no such  
16 Affidavit was prepared or produced.  
17  
18

19 As of June 26, 2008 counsel for Summerlin Hospital believes that it has provided counsel  
20 for Baxa with the documents discussed in the June 19, 2008 telephone conference.

21  
22 **III.**  
**CONCLUSION**

23 Based upon the forgoing, as well as the original moving papers, Summerlin Hospital  
24 respectfully requests their Motion to Intervene and their Motion for Determination of Good Faith  
25  
26  
27  
28

1 Settlement be granted and any and all claims for contribution and/or indemnity be forever barred.

2 DATED this 26<sup>th</sup> day of June, 2008.

3  
4 HALL PRANGLE & SCHOONVELD, LLC

5   
6 MICHAEL E. PRANGLE, ESQ.

7 Nevada Bar No. 8619

8 KENNETH M. WEBSTER, ESQ.

9 Nevada Bar No. 7205

10 HALL PRANGLE & SCHOONVELD, LLC

11 777 North Rainbow Blvd., Suite 225

12 Las Vegas, NV 89107

13 Attorneys for Summerlin Hospital

14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on the 26 day of June, 2008 a true and correct copy  
16 of the foregoing SUMMERLIN HOSPITAL MEDICAL CENTER, LLC, d/b/a SUMMERLIN  
17 HOSPITAL MEDICAL CENTER'S SUPPLEMENT TO ITS' MOTION TO INTERVENE  
18 AND MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT and was served  
19 via U.S. First-Class Mail, postage prepaid, addressed as follows:

20 Kerry L. Earley, Esq.  
21 RICHARD HARRIS LAW FIRM  
22 801 S. 4<sup>th</sup> St.  
23 Las Vegas, NV 89101  
24 Counsel for Plaintiffs

25 Nicholas M. Wieczorek, Esq.  
26 MORRIS POLICH & PURDY, LLP  
27 3930 Howard Hughes Pkwy, Ste. 360  
28 Las Vegas, NV 89169  
Counsel for Defendant Baxxa

29   
30 An Employee of Hall Prangle & Schoonveld, LLC

EXHIBIT A

1 MICHAEL E. PRANGLE, ESQ.  
Nevada Bar No. 8619  
2 KENNETH M. WEBSTER, ESQ.  
Nevada Bar No. 7205  
3 HALL PRANGLE & SCHOONVELD, LLC  
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6 Attorneys for Summerlin Hospital

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8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 KATHLEEN SHINN and RICHARD SHINN,  
Individually, as Heirs and as Personal Co-  
11 Administrators of the Estate of ALYSSA  
12 SHINN, Deceased,

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14 vs.

15 BAXA CORPORATION; MCKESSON  
16 CORPORATION, a Delaware Corporation;  
17 DOES 1 through 50, and ROE  
18 CORPORATIONS 1 through 20;

Case No.: 2:07-CV-01648-JCM-PAL

**AFFIDAVIT OF DAVID P. FERRAINOLO  
IN SUPPORT OF SUMMERLIN  
HOSPITAL MEDICAL CENTER'S  
SUPPLEMENT TO IT'S MOTION TO  
INTERVENE AND FOR  
DETERMINATION OF GOOD FAITH  
SETTLEMENT**

19 COUNTY OF CLARK       )  
                                  ) ss.  
20 STATE OF NEVADA       )

21 DAVID P. FERRAINOLO, ESQ, being duly sworn, deposes and states:

22  
23 1. I am an attorney, duly licensed to practice law in the State of Nevada, with the  
24 law firm of Hall, Prangle & Schoonveld, counsel of record for Summerlin Hospital in the above  
25 referenced matter. The following facts are personally known to me and if called upon as a  
26 witness, I could and would competently testify to their accuracy.  
27  
28

1           2.     On June 19, 2008 your Affiant spoke with Nicholas M. Wieczorek, Esq., counsel  
2 for Baxa and asked what documents he needed to be produced from the list in his May 19, 2008  
3 correspondence to Mr. Webster.

4           3.     Counsel for Baxa told your Affiant that at this point Summerlin Hospital did not  
5 have to produce all the documents requested in his May 19, 2008 correspondence except for the  
6 insurance policy for Summerlin Hospital and/or Baxa in effect during the period in question. See  
7 Exhibit "C" (letter from Ferrainolo to Wieczorek dated June 19, 2008)

8           4.     Your Affiant informed counsel for Baxa that Summerlin Hospital was self insured  
9 and that no primary insurance policy existed.  
10

11           5.     On June 24, 2008, Your Affiant contacted Mr. Wieczorek and notified him that he  
12 had received documents from Universal Health Services, Inc., and would be producing them  
13 shortly.  
14

15           6.     On June 26, 2008, Your Affiant produced to Mr. Wieczorek the Excess Liability  
16 Indemnity Policy via hand delivery.  
17

18           7.     On June 26, 2008, Your Affiant confirmed that Summerlin Hospital was self  
19 insured and that no physical insurance policy existed evidencing that self insurance and could not  
20 be produced.

21           8.     On June 26, 2008, Your Affiant offered to have an Affidavit prepared by the  
22 Person Most Knowledgeable at Universal Health Services, Inc. showing that Summerlin Hospital  
23 was self insured and that no physical insurance policy exists evidencing that fact.  
24

25           9.     Mr. Wieczorek instructed your Affiant that no such Affidavit was necessary at  
26 this point in the proceedings but may be necessary later.  
27  
28

**FURTHER AFFIANT SAYETH NOT.**

~~DEFIANT~~

*James Phillips*  
Notary Public  
in and for said County and State





EXHIBIT B



Form MAX OCR-01

Policy No. 9810-1092-UMB-2006

**MAX RE LTD.**

Producer: Marsh Global Markets (Bermuda) Ltd.

In favor of: Universal Health Services, Inc.

Address: 367 S. Gulph Road, King of Prussia  
PA 19406  
United States

Type of Coverage: **EXCESS LIABILITY INDEMNITY POLICY**

in the amount as stated in Item 2 of the Declarations.

Term: Beginning at 12:01 A.M. on the 1st day of January, 2006 with retroactive coverage, if applicable, from 12:01 A.M. on the 1st day of January, 2006, in each case, prevailing time at the address of the Named Insured and in accordance with terms and conditions of the form(s) attached.

PERIOD: January 1, 2006-January 1, 2007

PREMIUM: 

IN WITNESS WHEREOF, this Policy has been made, entered into and executed by the undersigned in Hamilton, Bermuda this 11<sup>th</sup> day of December, 2006.

By:   
Michael S. Morgan

Title: Senior Vice President

Policy No. 9810-1092-UMB-2006  
Date : December 11, 2006

**EXCESS LIABILITY INDEMNITY POLICY  
INSURANCE DECLARATIONS**

**Item 1** (a) **Named Insured:** Universal Health Services, Inc.  
(b) **Address of Named Insured:** 367 S. Gulph Road, King of Prussia  
PA 19406  
United States

**Item 2** **Limits of Liability:**  
(a)

<u>Layer</u>	<u>Per Occurrence Limit</u>	<u>Per Occurrence Retention</u>
1	90% Part of \$5,000,000	\$ 15,000,000

(b) **Annual Aggregate:** \$4,500,000

**Item 3** **Policy Inception Date:** January 1, 2006  
**First Annual Period Expiration Date:** January 1, 2007

**Item 4** **Retroactive Coverage Date:** January 1, 2006

**Item 5** **Representative of Named Insured:** Universal Health Services, Inc.

**Item 6** **Currency:**  
(a) **Premium:** U.S. Dollars  
(b) **Claims:** U.S. Dollars

**Item 7** **Premium:** [REDACTED]

\* At 12:01 a.m. at the address of the Named Insured listed in Item 1(b) above.



**Item 8**

**The Company:**

**(a) All Notices of Occurrence:**

Claims Department  
Max Re Ltd.  
Max Re House  
2 Front St.  
P.O. Box HM 2565  
Hamilton HM KX, Bermuda  
Fax: 441-296-8811  
Email: [claims@maxre.bm](mailto:claims@maxre.bm)

**(b) All other Notices:**

Underwriting Department  
Max Re Ltd.  
Max Re House  
2 Front St.  
P.O. Box HM 2565  
Hamilton HM KX, Bermuda  
Fax: 441-296-8811

**Item 9**

**Application Date: October 1, 2005**



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**NOTICE: THIS TABLE OF CONTENTS IS FOR REFERENCE PURPOSES ONLY. IT IS NOT PART OF THE TERMS, CONDITIONS OR EXCLUSIONS OF THIS POLICY AND IS NOT INTENDED TO AFFECT THE MEANING OF SUCH TERMS, CONDITIONS OR EXCLUSIONS.**

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**NOTICE**

THIS IS A STAND-ALONE INDEMNITY POLICY WHICH IS NOT SUBJECT TO THE TERMS AND CONDITIONS OF ANY OTHER INSURANCE AND CONTAINS PROVISIONS WHICH MAY BE DIFFERENT FROM THOSE OF ANY OTHER INSURANCE. IT SHOULD BE READ CAREFULLY BY THE INSURED.

COVERAGE APPLIES, SUBJECT TO THE TERMS, CONDITIONS AND EXCLUSIONS OF THE POLICY, ONLY IF NOTICE OF OCCURRENCE IS FIRST GIVEN TO THE COMPANY DURING THE POLICY PERIOD OR, IF PURCHASED, THE DISCOVERY PERIOD. THE DATE SUCH NOTICE IS FIRST GIVEN IS THE DATE FOR DETERMINATION OF THE APPLICABLE LIMITS, RETENTIONS, TERMS, CONDITIONS AND EXCLUSIONS OF THE POLICY.

THE COMPANY DOES NOT HAVE ANY DUTY TO DEFEND. DEFENSE COSTS COVERED BY THIS POLICY ARE INCLUDED WITHIN AND ARE NOT IN ADDITION TO THE LIMITS OF LIABILITY OF THIS POLICY.

THIS POLICY (INCLUDING ANY ENDORSEMENTS) IS ISSUED IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM SET FORTH IN ITEM 7 OF THE DECLARATIONS AND IN RELIANCE UPON THE STATEMENTS IN THE APPLICATION AND SCHEDULES ATTACHED THERETO AND INCORPORATED THEREIN AND REFERRED TO IN ITEM 9 OF THE DECLARATIONS AND ANY RENEWAL APPLICATION(S) AND ANY SUPPLEMENTARY INFORMATION PERTAINING TO ANY SUCH APPLICATION, WHICH SHALL BE DEEMED INCORPORATED HEREIN.



## **INSURING AGREEMENTS**

### **I COVERAGE**

Max Re Ltd. (the "Company") shall, subject to the limitations, terms, conditions and exclusions below, indemnify the Insured for Ultimate Net Loss the Insured pays by reason of liability:

- (a) imposed by law, or
- (b) of a person or party who is not an Insured assumed by the Insured under contract or agreement,

for Damages on account of:

- (i) **Personal Injury**
- (ii) **Property Damage**
- (iii) **Advertising Liability**

encompassed by an Occurrence, provided:

**COVERAGE A:** notice of the Occurrence shall have been first given by the Insured in an Annual Period during the Policy Period in accordance with Article V of this Policy, or

**COVERAGE B:** notice of the Occurrence shall have been first given during the Discovery Period in accordance with Article V of this Policy, but only if the Discovery Period option has been elected in accordance with the provisions of this Policy.

### **II LIMITS OF LIABILITY**

A. Regardless of the number of Insureds under this Policy, for each layer of coverage set forth in Item 2(a) of the Declarations the Company shall be liable only for that amount of Ultimate Net Loss for each Occurrence covered under this Policy which is in excess of the greater of:

- (1) the amounts indicated as the limits (including, without limitation, any reinstatements thereof, where applicable) of the underlying insurances and any self-insured retentions listed, or which should have been listed, on the present or any prior Schedule B annexed to this Policy and any other underlying insurance, as to which the Company and the Named Insured expressly agree that the insurance provided by this Policy shall:
  - (a) be in excess in respect of such Occurrences or Claims and Ultimate Net Loss as are covered by said underlying insurances (it being understood

that this Policy shall in no way be subject to, or affected by, the terms, conditions or exclusions of said underlying insurances), and

- (b) apply only as if such underlying insurances were fully available and collectable (except to the extent that any aggregate limits thereof are reduced or exhausted by actual payment of claims) for all occurrences or claims covered thereunder,

or

- (2) the per Occurrence retention amount listed in Item 2 of the Declarations (which may be satisfied only by Ultimate Net Loss as defined herein),

and then only up to the per Occurrence limit of liability stated in Item 2(a) of the Declarations in respect of such layer for each Occurrence covered hereunder, and further subject to the aggregate limit of liability stated in Item 2(b) of the Declarations for all layers for all Occurrences covered hereunder of which notice is first given during each Annual Period (or during the Discovery Period with respect to the immediately preceding Annual Period or portion thereof); provided, however, that for all Insureds the applicable aggregate limit of liability, per Occurrence limit of liability, per Occurrence retention, and the terms, conditions and exclusions of coverage shall be determined under the Policy as in effect at the time notice of the Occurrence or Notice of Integrated Occurrence for which coverage is asserted is first given pursuant to Article V of this Policy by any Insured. This Policy shall not be subject to or follow the form of any underlying insurances but shall apply in accordance with its own terms, conditions and exclusions.

- B. All Personal Injury or Property Damage covered hereunder encompassed by an Integrated Occurrence shall be added together and treated as included within one Occurrence. If notice of an Occurrence (which was not a Notice of Integrated Occurrence) was given during a prior Annual Period, and if Personal Injury or Property Damage which is included in such Occurrence is included in an Integrated Occurrence of which Notice of Integrated Occurrence is first given during a subsequent Annual Period, all Ultimate Net Loss arising from such earlier notified Occurrence shall be included in the Ultimate Net Loss arising from such Integrated Occurrence. Any payments of Ultimate Net Loss on account of such earlier notified Occurrence shall be deemed to have been made under the Annual Period in which the Company received such Notice of Integrated Occurrence. The erosion of the applicable limits of liability in the respective Annual Periods of this Policy shall be adjusted to reflect such transfer of Ultimate Net Loss payments from the prior Annual Period to the Annual Period in which Notice of Integrated Occurrence was first given.
- C. (1) Notwithstanding Section H.B of the Policy, in any instance in which first notice of an Occurrence (which is not a Notice of Integrated Occurrence) ("Original Occurrence") is given where Personal Injury and/or Property Damage included

in such Original Occurrence is included in an Integrated Occurrence of which Notice of Integrated Occurrence is first given at a later time, if the Ultimate Net Loss attributable to the Original Occurrence (as finally determined) exceeds the per Occurrence retention for the Annual Period in which notice of the Original Occurrence was first given, then Ultimate Net Loss arising from such Original Occurrence shall not be transferred to the later Annual Period in which the Company received first notice of the Integrated Occurrence; the Company shall pay such Ultimate Net Loss in excess of per Occurrence retention amount, which shall be subject to and erode the aggregate limit of liability (Item 2(b) of the Declarations) for the Annual Period in which notice of the Original Occurrence was first given. Nonetheless, the Ultimate Net Loss arising from the Original Occurrence shall apply as respects erosion of the per Occurrence retention (Item 2(a) of the Declarations) and, when paid by the Company, the per Occurrence limit of liability (Item 2(a) of the Declarations) in the Annual Period in which Notice of Integrated Occurrence in respect thereof was first given; provided, however, that any Ultimate Net Loss indemnified by the Company in respect of the Original Occurrence shall not erode the annual aggregate limit of liability (Item 2 (b) of the Declarations) in the Annual Period in which Notice of Integrated Occurrence is first given.

- (2) Notwithstanding paragraph (3) of Definition III V of the Policy, where separate Occurrences pursuant to such paragraph (3), except for the thirty (30) day limitation, would otherwise be a single Occurrence under paragraph (2) of Definition III V, then all such separate Occurrences, combined, shall be subject to a limit of liability equal to the largest aggregate limit of liability stated in Item 2(b) of the Declarations in effect at the time of first notice of any such separate Occurrence pursuant to Article V of this Policy by any Insured.
- D. (1) As regards any liability of an Insured which arises in any manner whatsoever out of operations or the existence of any Joint Venture in which such Insured has an interest, the liability of the Company under this Policy in each layer shall be limited to the product of (i) the percentage interest of the Insured in such liability of such Joint Venture (whether direct or by virtue of the insolvency of others interested in such Joint Venture) and (ii) the total limit of liability insurance afforded such Insured for such layer by this Policy.
- (2) It is further understood and agreed that in circumstances where paragraph (1) applies to limit the liability of the Company under this Policy, the Company shall be liable for each layer in respect of the liability of the Insured in excess of the greater of:
    - (a) the product of the per Occurrence retention amount specified in Item 2 of the Declarations for such layer and the percentage interest of the Insured

- in such liability of such Joint Venture as determined pursuant to paragraph (1), or
- (b) the limits of the underlying insurance(s) (as reduced by general provisions relating to Joint Ventures, if applicable).
- (3) It is further understood and agreed that paragraphs (1) and (2) of this Section D shall not apply if:
- (i) the Insured has sole responsibility for the Joint Venture, or
  - (ii) the Insured is obligated to provide insurance for the Joint Venture in its entirety such as is afforded by this Policy.
- E. The inclusion or addition hereunder of more than one Insured shall not operate to increase the Company's limits of liability beyond those set forth herein.

### III. DEFINITIONS

- A. "Advertising Liability" means liability for Damages on account of:
- (1) libel, slander or defamation,
  - (2) any infringement of copyright or of title or of slogan,
  - (3) piracy or misappropriation of ideas under an implied contract, or
  - (4) any invasion of right of privacy,
- committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activities.
- B. "Aircraft" means any aircraft, missile or spacecraft.
- C. "Annual Period" means:
- (1) with respect to the first Annual Period, the period commencing at the Inception Date and expiring on the First Annual Period Expiration Date set forth in Item 3 of the Declarations;
  - (2) with respect to any subsequent Annual Period in Coverage A, the one (1) year period commencing at the First Annual Period Expiration Date or each anniversary thereof; or
  - (3) with respect to Coverage B, the one (1) year period commencing at the expiration of Coverage A or each anniversary date and time of such expiration.

- D. **"Automobile"** means a land motor vehicle, trailer or semi-trailer.
- E. **"Bodily Injury"** means physical injury to the body of a person including death at any time resulting therefrom.
- F. **"Claim"** means an oral or written demand against an Insured for Damages and includes the threat or initiation of any suit or arbitration proceeding or a request for a tolling agreement.
- G. **"Damages"** means all forms of compensatory damages, monetary damages and statutory damages, punitive or exemplary damages and costs of compliance with equitable relief, other than governmental (civil or criminal) fines or penalties, which the Insured shall be obligated to pay by reason of judgment or settlement for liability on account of Personal Injury, Property Damage and/or Advertising Liability covered by this Policy, and shall include Defense Costs.
- H. **"Defense Costs"** means reasonable legal costs and other expenses incurred by or on behalf of the Insured in connection with the defense of any actual or anticipated Claim, including attorneys' fees and disbursements, law costs, premiums on attachment or appeal bonds, pre-judgment and post-judgment interest, expenses for experts and for investigation, adjustment, appraisal and settlement, excluding the salaries, wages and benefits of the Insured's employees and the Insured's administrative expenses.
- I. **"Discharge"** means discharge, emission, dispersal, migration, release or escape (or any series of such of a similar nature at the same site) but does not include any discharge, emission, dispersal, migration, release or escape to the extent that the Pollutants involved remain confined within the building or other man-made structure in which they initially were located.
- J. **"Discovery Period"** means the period, if applicable, commencing upon the Termination Date of Coverage A of this Policy and ending on the earlier of expiration of the last Annual Period for which Coverage B is elected as provided in Condition S hereof or the effectiveness of cancellation pursuant to Condition L hereof.
- K. **"Executive Officer"** means the Chairman of the Board, Chief Executive, Operating, Financial and Administrative Officers, Managing Director, and any Vice President (including, without limitation, Executive and Senior levels) and any manager in the Risk Management or Law Department of the Named Insured or, if the Named Insured is not the principal operating company insured hereunder, of the Insured which is the principal operating company; if any of such designations are not applicable, the equivalent level personnel shall be substituted.

**L. (1) Nature of Expectation or Intent**

**Personal Injury, Property Damage or Advertising Liability shall be "Expected or Intended" where:**

- (a) actual or alleged Personal Injury, Property Damage or Advertising Liability is expected or intended by an Insured;**
- (b) as respects an Integrated Occurrence, an Insured has historically experienced a level or rate of actual or alleged Personal Injury or Property Damage; or**
- (c) as respects an Integrated Occurrence, an Insured expects or intends a level or rate of actual or alleged Personal Injury or Property Damage (irrespective of whether or not the Insured expects or intends Personal Injury to any specific individual or Property Damage to any specific property);**

provided, however, that in the case of subparagraph (b) and/or (c) above, if actual or alleged **Personal Injury or Property Damage** fundamentally different in nature or at a level or rate vastly greater in order of magnitude occurs, all such actual or alleged fundamentally different or vastly greater **Personal Injury or Property Damage** shall not be deemed "Expected or Intended" (subject to paragraph 3 below).

**(2) Timing of Determination**

**"Expected or Intended" is determined with reference to what is Expected or Intended (as set forth in paragraph 1 above):**

- (a) at the time of any action (or inaction) by any person so acting (or failing to act) on behalf of an Insured (including, without limitation, the sale by an Insured of any Insured's Products) concerning the consequences thereof, the expectation or intent of any individual person shall be attributed to an entity Insured only if and to the extent that such person is acting (or failing to act) within the scope of their duties on behalf of such entity,**
- (b) at the Inception Date by any Executive Officer, and/or**
- (c) as respects any liability of a person or party who is not an Insured assumed by an Insured under a contract or agreement, by an Insured at the time of such assumption.**

(3) **Commercial Risk**

As respects any **Integrated Occurrence** arising out of the **Insured's Products**, actual or alleged **Personal Injury** or **Property Damage** similar to, and not vastly greater in order of magnitude than, that included in such **Integrated Occurrence** arising out of sales, if any, of such products by the **Insured** after the date of the **Notice of Integrated Occurrence** shall be deemed **Expected** or **Intended**. No inference shall be drawn from the giving of a **Notice of Integrated Occurrence** or from this paragraph (3) that actual or alleged **Personal Injury** or **Property Damage** arising out of sales of such products by the **Insured** prior to the date of such **Notice of Integrated Occurrence** either was or was not **Expected** or **Intended**.

- M. **"Inception Date"** means the date set forth in Item 3 of the Declarations; provided, however, that with respect to any **Insured** which becomes an **Insured** subsequent to the **Inception Date**, the **Inception Date** for that **Insured** shall be the date such person or entity became an **Insured** under this Policy or such other date as may be agreed in writing between the **Named Insured** and the **Company**; provided further that as respects any layer of coverage not set forth in Item 2(a) of the original Declarations which is added by **Endorsement**, the **Inception Date** shall be the effective date of such **Endorsement** unless otherwise agreed in writing between the **Named Insured** and the **Company**.
- N. **"Incidental Watercraft Use"** means use by the **Insured** of any owned, leased or chartered **Watercraft** less than 75 feet in length but shall not include:
- (1) use of **Watercraft** for the commercial carriage for a fee of passengers or cargo for parties other than the **Insured** in exchange for a fee;
  - (2) use of **Watercraft** in connection with the commercial provision of marine services to others for a fee;
  - (3) use of any **Watercraft** held in inventory or otherwise for lease or charter to another person by an **Insured** in the business of lease or charter of **Watercraft**; or
  - (4) use of **Watercraft** owned by a party other than the **Insured** which is being serviced, maintained, fueled, or tested or otherwise is in the temporary care, custody or control of the **Insured** in connection with any business operations of the **Insured** relating to **Watercraft** servicing, maintenance, fueling, testing, storage or associated or similar matters.
- O. **"Industrial Aid Aircraft Use"** means use by the **Insured** of any owned, non-owned, leased or chartered **Aircraft** principally for the transportation of officers and employees of the **Insured** and invited guests having a seating capacity (exclusive of cockpit crew



but inclusive of cabin crew) of no more than 20 persons (whether or not all such seats are occupied) but shall not include:

- (1) use of any Aircraft for any commercial or charter passenger and/or cargo airline, any other Aircraft charter operation, any flight school or aviation training business or any other operations by which the Insured for compensation (other than cost reimbursement) makes available Aircraft owned, operated or used by it or aviation transportation services to others;
- (2) use of any Aircraft held in inventory or otherwise for sale, lease, charter or delivery to another person by an Insured in the business of manufacture, sale, lease or charter of Aircraft;
- (3) use of Aircraft for product testing or demonstration purposes;
- (4) use of Aircraft owned by a party other than the Insured which is being serviced, maintained, fueled or tested or otherwise is in the temporary care, custody or control of the Insured in connection with any business operations of the Insured relating to Aircraft servicing, maintenance, fueling, testing, storage or associated or similar matters; or
- (5) use of any Aircraft giving rise to liability of the Insured arising out of the Insured's Products.

P. "Insured" means, except as specifically stated otherwise in this Policy, all Insureds as defined below:

- (1) the Named Insured and, if the Named Insured is designated in Item 1(a) of the Declarations as a partnership or Joint Venture, the partnership or Joint Venture so designated and each partner or member thereof but only with respect to his or its liability as such;
- (2) (a) any subsidiary or affiliate of the Named Insured for any Annual Period whose accounts as of the date of the financial statements of the Named Insured submitted to the Company most recently prior to the rating of the premium for such Annual Period (i) are consolidated in the financial statements of the Named Insured in accordance with generally accepted accounting principles in the United States of America, or (ii) were eligible for such consolidation (or in the case of a non-United States Named Insured would have been consolidated or eligible for consolidation if United States generally accepted accounting principles applied) and whose financial statements were submitted to the Company with such financial statements of the Named Insured as of such date;



- (b) any subsidiary, affiliate or associated company of the Named Insured listed on Schedule A hereto;
- (3) any present or former officer, director, stockholder or employee of any person or entity named in paragraph (1) or (2) above or (6) below, but only while acting within the scope of his or her duties as such, and any person or organization with respect to liability for providing real estate management for any such person or entity named in paragraph (1) or (2) above or (6) below;
- (4) any person, organization, trustee or estate to whom any person or entity named in paragraph (1) or (2) above or (6) below is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this Policy, but only to the extent of such obligation and only in respect of operations (other than commercial insurance operations) by or on behalf of such person or entity named in paragraph (1) or (2) above or (6) below or of facilities owned or used by such person or entity named in paragraph (1) or (2) above or (6) below;
- (5) with respect to any Automobile owned by any person or entity named in paragraph (1), (2) or (3) above or (6) below or hired for use on behalf of any such person or entity, any person or organization legally responsible for the use thereof, provided the actual use of the Automobile is with the permission of such person or entity;
- (6) any Joint Venture in which any entity listed in paragraph (1) or (2) above has an interest, but only if:
  - (a) the Insured has sole responsibility for the Joint Venture, or
  - (b) the Insured is obligated to provide insurance for the Joint Venture in its entirety such as is afforded by this Policy.
- (7) It is agreed automatically to include as an Insured without listing on Schedule A hereto or adjustment of premium under this Policy for any Annual Period any entity acquired or formed by or merged with an Insured (a "Potential Additional Insured") during such Annual Period provided that:
  - (a) the fair value of the sum of all cash, securities, assumed indebtedness and other consideration expended by all Insureds for any such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers does not exceed 5% of the total assets of the Named Insured and its consolidated subsidiaries and affiliates as most recently reported to the Company for rating purposes prior to such Annual Period;
  - (b) the incremental annual gross revenues attributable to such acquisition, formation or merger or series of interrelated acquisitions, formations or

mergers do not exceed 5% of the total annual gross revenues of the Named Insured and its consolidated subsidiaries and affiliates as most recently reported to the Company for rating purposes prior to such Annual Period; and

- (c) neither the operations of the Potential Additional Insured prior to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers nor the resultant combined or consolidated operations of the Insured and the Potential Additional Insured subsequent to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers are materially different from those of such Insured prior to such acquisition, formation or merger or series of interrelated acquisitions, formations or mergers.

Unless notice to the Company shall have been given and additional premium, if any, shall have been paid in respect of any acquisition, formation or merger (or series thereof) not meeting the criteria set forth herein, such Potential Additional Insured shall not be an Insured hereunder, and liability assumed by an Insured in connection with such acquisition, formation or merger (or series thereof) shall not be indemnified hereunder.

With respect to any Occurrence giving rise to liability of any Potential Additional Insured that qualifies as an Insured hereunder, the Inception Date shall be the date of merger with or acquisition or formation of the Potential Additional Insured by an Insured or such other date as may be agreed in writing between the Named Insured and the Company. If during any Annual Period an Insured acquires a business, division or other operations by asset acquisition, such asset acquisition shall be considered an acquisition of an entity for purposes of this paragraph (7).

- Q. "Insured's Products" means goods or products manufactured, sold, tested, handled or distributed by the Insured or others trading under its name, or tools, uninstalled equipment or abandoned or unused materials that were the subject of completed operations performed for others by the Insured.
- R. "Integrated Occurrence" means an Occurrence encompassing actual or alleged Personal Injury, Property Damage and/or Advertising Liability to two or more persons or properties which commences over a period longer than thirty (30) consecutive days which is attributable directly, indirectly or allegedly to the same actual or alleged event, condition, cause, defect, hazard and/or failure to warn of such; provided, however, that such Occurrence must be identified in a notice pursuant to Section C of Article V as an "Integrated Occurrence" and is subject to all provisions of paragraphs (1) and (2) of Definition V.

- S. "Joint Venture" means any joint venture, co-venture, joint lease, joint operating agreement or partnership, which in each case is neither incorporated nor otherwise affords limited liability to an Insured having an interest therein.
- T. "Named Insured" means the entity first named in Item 1(a) of the Declarations.
- U. "Notice of Integrated Occurrence" means a notice pursuant to Definition R, given in accordance with the provisions of Article V, Sections C and D.
- V. "Occurrence" (1) exists if, and only if:
- (a) except with respect to actual or alleged Personal Injury or Property Damage arising from the Insured's Products, there is an event or continuous, intermittent or repeated exposure to conditions which event or conditions commence on or subsequent to the Inception Date, or the Retroactive Coverage Date, if applicable, and before the Termination Date of Coverage A, and which cause actual or alleged Personal Injury, Property Damage or Advertising Liability;
  - (b) actual or alleged Personal Injury to any individual person, or actual or alleged Property Damage to any specific property, arising from the Insured's Products takes place on or subsequent to the Inception Date, or the Retroactive Coverage Date, if applicable, and before the Termination Date of Coverage A.
- (2) Except as provided in paragraph (3) below, where an Occurrence exists and a series of and/or several actual or alleged Personal Injuries, Property Damages and/or Advertising Liabilities occur which are attributable directly, indirectly or allegedly to the same actual or alleged event, condition, cause, defect, hazard and/or failure to warn of such, all such actual or alleged Personal Injuries, Property Damages and/or Advertising Liabilities shall be added together and treated as encompassed by one Occurrence irrespective of the period (but without limiting the effect of Exclusion IV.A) or area over which the actual or alleged Personal Injuries, Property Damages and/or Advertising Liabilities occur or the number of such actual or alleged Personal Injuries, Property Damages and/or Advertising Liabilities; provided, however, that any actual or alleged Personal Injury, Property Damage or Advertising Liability which is Expected or Intended by any Insured shall not be included in any Occurrence. So far as Personal Injuries, Property Damages and/or Advertising Liabilities resulting or alleged to result from the design, formulation, manufacture, distribution, use, operation, maintenance and/or repair of an Insured's Product, and/or the failure to warn as to the use, operation, maintenance and/or repair of an Insured's Product, the term "the same actual or alleged event, condition, cause, defect, hazard and/or failure to warn of such" means any such design, formulation, manufacture, distribution, use, operation, maintenance, repair and/or

failure to warn, as the case may be, as to which such losses, injuries or damages are directly, indirectly or allegedly attributable. As respects Advertising Liability, multiple or repeated broadcasts or publications of the same or similar materials shall constitute "the same actual or alleged event, condition, cause or defect."

- (3) Notwithstanding paragraphs (1) and (2) above, if an Occurrence is not identified in the notice thereof as an "Integrated Occurrence," then actual or alleged Personal Injury to each person, Property Damage to each piece of property and/or Advertising Liability which commences at any time shall be deemed to be encompassed within a separate Occurrence from which Personal Injury to any other person, Property Damage to any other piece of property and/or Advertising Liability which commences more than thirty (30) days prior or later thereto is encompassed.
- W. "Personal Injury" means Bodily Injury, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination, humiliation, and libel, slander or defamation of character or invasion of rights of privacy.
- X. "Policy Period" means the period commencing with the Inception Date and ending with the Termination Date of Coverage A.
- Y. "Pollutant" means any solid, liquid, gaseous or thermal irritant, contaminant or toxic or hazardous substance or any substance which may, does, or is alleged to affect adversely the environment, property, persons or animals, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and Waste.
- Z. "Product Pollution Liability" means liability or alleged liability for Personal Injury or Property Damage arising out of the end-use of the Insured's Products, if such use occurs after possession of such goods or products has been relinquished to others by the Insured or by others trading under its name and if such use occurs away from premises owned, rented or controlled by the Insured; such goods or products shall be deemed to include any container thereof other than an Automobile, Watercraft or Aircraft.
- AA. "Property Damage" means:
- (1) physical damage to or destruction of tangible property, including the loss of use thereof at any time resulting therefrom;
  - (2) loss of use of tangible property which has not been physically damaged or destroyed arising from physical damage to or destruction of other tangible property, or ...

- (3) losses consequent upon evacuation arising from actual or threatened **Bodily Injury** or destruction of tangible property.
- BB. **"Retroactive Coverage Date"** means the date, if any, set forth in Item 4 of the Declarations; provided, however, that with respect to coverage for any **Insured** which becomes an **Insured** subsequent to the **Inception Date**, the **Retroactive Coverage Date** shall be the date such person or entity became an **Insured** under this Policy or such other date as may be endorsed on to this Policy in writing; provided further that as respects any layer of coverage not set forth in Item 2(a) of the original Declarations which is added by Endorsement, the **Retroactive Coverage Date** shall be the effective date of such Endorsement unless otherwise agreed in writing between the **Named Insured** and the Company.
- CC. **"Termination" or "Termination Date"** means:
- (1) for Coverage A, the earlier of the effective cancellation date of this Policy pursuant to Condition L or the end of an **Annual Period** if Coverage A is not extended pursuant to Condition Q;
  - (2) for Coverage B, the end of the **Discovery Period**.
- DD. **"Ultimate Net Loss"** means the total sum which the **Insured** shall become obligated to pay for **Damages** on account of **Personal Injury**, **Property Damage** and/or **Advertising Liability** which is, and/or but for the amount thereof would be, covered under this Policy less any salvages or recoveries.
- EE. **"Waste"** means all waste and includes, without limitation, materials to be discarded, stored pending final disposal, recycled, reconditioned or reclaimed.
- FF. **"Watercraft"** means any ship or vessel of whatever type, including, but not limited to, cargo vessels, passenger vessels, other vessels used for transport, towboats and barges, vessels used in the construction of pipelines, platforms or other facilities, storage vessels, tanker vessels, drill ships, drilling rigs and barges (including, without limitation, submersible drill rigs and barges, semi-submersible drill rigs and barges and self-elevating drill rigs and barges) and all other vessels of whatever nature and description, all whether or not self-propelled. **Watercraft** shall not include an offshore oil or gas platform secured in place for drilling or producing operations.

#### IV. EXCLUSIONS

This Policy does not apply to actual or alleged:

**A. PRIOR TO INCEPTION OR RETROACTIVE COVERAGE DATE**

**Personal Injury** to any individual person, **Property Damage** to any specific property or **Advertising Liability** which takes place prior to the **Inception Date** or, if applicable, the **Retroactive Coverage Date**.

**B. WORKERS' COMPENSATION, ETC.**

Liability in respect of any obligation for which the **Insured** or any company as its insurer may be liable under any workers' compensation, unemployment compensation or disability benefits law; provided, however, that this Exclusion B does not apply to liability of others assumed by the **Insured** under contract or agreement or to liability arising under the Federal Employers Liability Act, the Jones Act or, in the case of any **Insured** which is an authorized self-insured, the Longshoremen's and Harbor Workers' Compensation Act.

**C. PROFESSIONAL SERVICES**

Liability for **Property Damage** arising out of any act, error or omission in the rendering of professional services, other than architectural and engineering services (which are nonetheless subject to the other exclusions herein, including, without limitation, Exclusion E below), including, but not limited to, the rendering of legal, accounting, data processing, consulting, or investment advisory services.

**D. OWNED PROPERTY; CARE, CUSTODY OR CONTROL, ETC.**

**Property Damage** to:

- (1) property owned or occupied by or rented to any **Insured**;
- (2) property loaned to any **Insured**;
- (3) property in the care, custody or control of any **Insured**; or
- (4) that particular part of real property or fixtures on which any **Insured** or any contractors or sub-contractors working directly or indirectly on behalf of any **Insured** are performing operations, if such **Property Damage** arises out of such operations;

provided, however, that paragraphs (2), (3) and (4) of this Exclusion D do not apply to liability assumed under a railway sidetrack agreement; provided further that paragraphs (1) and (3) of this Exclusion D do not apply as respects damage to property of



any Insured which is an Insured solely by virtue of paragraph (4) of Definition P where such property is not owned or occupied by, rented to, or in the care, custody or control of any Insured which is an Insured other than by virtue of paragraph (4) of Definition P.

**E. EFFICACY, LOSS OF USE, ETC.**

Liability of the Insured:

- (1) arising out of the failure of any Insured's Products or of work, including architectural or engineering services, by or on behalf of any Insured to meet any warranty or representation by any Insured as to the level of performance, quality, fitness or durability or to perform their function or serve their purpose, to the extent that such liability is for the diminished value or utility of any Insured's Products or work by or on behalf of any Insured;
- (2) without limiting paragraph (1) of this Exclusion E, in respect of Property Damage to any Insured's Products or of work, including, without limitation, architectural or engineering services, performed by or on behalf of any Insured, if such Property Damage arises out of any portion of such products or work, or out of materials, parts or equipment furnished in connection therewith;
- (3) for the costs incurred for the withdrawal, inspection, repair, recall, return, replacement or disposal of any Insured's Products or work, including, without limitation, architectural or engineering services, or, in connection with any of the foregoing, loss of use thereof; provided, however, that this paragraph (3) shall not apply in respect of costs incurred for the withdrawal, inspection, repair, recall, return, replacement or disposal of products or work of a party other than an Insured of which the Insured's Products or work forms a part; or
- (4) in respect of decline of value of real or personal property to the extent such decline in value is attributable not to physical damage or destruction thereof but to proximity to continuing operations, activities or equipment which limit the usage of such property or make occupation of such property by people less feasible or desirable.

**F. ADVERTISING**

Advertising Liability arising out of:

- (1) breach of contract, but this paragraph (1) shall not exclude liability for unauthorized misappropriation of advertising ideas based upon breach or alleged breach of an implied contract;
- (2) infringement of registered trademarks, service marks or trade name by use thereof, but this paragraph (2) shall not apply to titles or slogans;

- (3) the failure of goods, products or services to conform with advertised quality or performance;
- (4) the wrong description of the price of goods, products or services; or
- (5) advertising activities on behalf of a party other than an Insured by an Insured engaged in the business of advertising.

**G. WAR**

**Personal Injury, Property Damage or Advertising Liability** directly or indirectly occasioned by, happening through or in consequence of war, invasion, hostile action of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority; provided, however, that this Exclusion G shall not apply to **Personal Injury, Property Damage or Advertising Liability**:

- (1) taking place in and caused by the foregoing events in the land area of the United States of America, its territories or possessions, Puerto Rico or Canada; or
- (2) caused by any act or acts committed by one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes where (a) such person or persons are not acting on behalf of a government, governmental authority or other power (usurped or otherwise) which exercises de facto jurisdiction over part or all of the populated land area of the country in which the **Personal Injury or Property Damage** takes place; and (b) if such person or persons are acting as an agent or agents of any government recognized de jure by a majority of Belgium, Canada, France, Germany, Japan, the United Kingdom and the United States, such person or persons are acting secretly and not in connection with the operation of regular military or naval armed forces in the country where the **Personal Injury or Property Damage** takes place.

**H. TOXIC SUBSTANCES**

**Personal Injury, Property Damage or Advertising Liability** arising out of the manufacture, distribution, sale, installation, removal, utilization, ingestion or inhalation of, or exposure to or existence of, as the case may be:

- (1) asbestos or any asbestos-containing materials; provided, however, that this Exclusion H shall not apply to **Property Damage** arising out of asbestos not contained in the Insured's Products as a result of explosion, hostile fire or lightning;



- (2) tobacco or any tobacco products (or ingredients of, or used in the manufacture or production of, such products);
- (3) 2,3,7,8-TCDD (2,3,7,8-tetrachlorodibenzo-p-dioxin);
- (4) asbestiform talc;
- (5) diethylstilbestrol ("DES");
- (6) any intra-uterine device ("IUD");
- (7) any product containing silicone which is in any form implanted or injected in the body;

provided, however, that this Exclusion H shall not apply to actual or alleged Personal Injury or Property Damage where such Personal Injury or Property Damage is not related to the asbestos, tobacco (or other consumed portion of a tobacco product), 2,3,7,8-TCDD, asbestiform talc, DES, IUD or silicone content of goods, materials or products or completed operations. The listing of materials herein shall not give rise to an inference that Personal Injury, Property Damage or Advertising Liability attributable to other materials was neither Expected nor Intended by the Insured.

#### **I. AIRCRAFT**

Liability arising out of the design, manufacture, construction, maintenance, service, use or operation of any Aircraft or any component part or equipment thereof or any other Aircraft navigational or related equipment or service, including, without limitation, liability arising from a crash or hijacking; provided, however, that this Exclusion I shall not apply to any liability or alleged liability in respect of:

- (1) Aircraft fueling and related operations with respect to Personal Injury or Property Damage occurring at the time of such operations, i.e., while the Aircraft involved is on the ground and motionless;
- (2) liability in respect of any item of goods intended to be a component part of an Aircraft or Aircraft equipment where such part or equipment has not yet been incorporated into any Aircraft (other than an incomplete Aircraft which is in the process of initial manufacture at an indoor premises and which has never been used for self-propelled movement either on the ground or in the air) and such liability and the Personal Injury, Property Damage or Advertising Liability giving rise thereto do not arise directly or indirectly out of a crash, hijacking or other circumstance in connection with the operation of any Aircraft;
- (3) liability in connection with manufacturing and associated operations in respect of Aircraft or any component part thereof or any Aircraft equipment where all

**Personal Injury and Property Damage** giving rise to such liability take place at a manufacturing, storage or associated premises on the ground (or in connection with on the ground transportation by other than an Aircraft) and such liability and the **Personal Injury, Property Damage or Advertising Liability** giving rise thereto do not arise directly or indirectly out of a crash, hijacking or other circumstance in connection with the operation of any Aircraft;

- (4) the **Insured's Products** which consist of or are incorporated into cabin furnishings, food service equipment or other materials or equipment used in the interior of an Aircraft which are not necessary or integrally related to flight, take-off, landing or navigation of the Aircraft;
- (5) the **Insured's Products** which are of a type and grade sold principally for purposes other than use in Aircraft or aviation which are incorporated into Aircraft hulls or components or aviation related equipment (e.g., microchips used principally in personal computers which also are used in flight computers or a grade of aluminum ingot suitable for a broad range of commercial uses which is used in an Aircraft wing);
- (6) liability for physical **Property Damage** to third parties or **Personal Injury** arising out of or allegedly arising out of **Industrial Aid Aircraft Use**, but in respect of any Occurrence arising out of **Industrial Aid Aircraft Use** the per Occurrence retention amount shall be the greater of the amount set forth in Item 2(a) of the Declarations or US\$100,000,000. "Physical Property Damage to third parties" shall include only physical damage to other Aircraft or to tangible property on the ground occurring upon the physical impact of the Aircraft owned, leased or chartered by the Insured or the debris thereof with such other Aircraft or property on the ground (as well as associated debris removal) and shall not include, without limitation, **Property Damage** to the hull or any other portion of the Aircraft, owned, used, leased or chartered by the Insured or to its cargo or other contents; or
- (7) liability of an Insured in its capacity as architect, engineer, construction contractor, owner, lessee, operator or occupant of, or party otherwise having responsibility for, any building or other ground-based fixed structure or Watercraft with which an Aircraft collides.

#### **J. WATERCRAFT**

Liability arising out of the design, construction, maintenance, sale, manning, ownership or operation of any Watercraft, but this Exclusion J shall not apply to:

- (1) Watercraft or risks listed on Schedule C hereto and any additional Watercraft acquired in the ordinary course of business during the Policy Period which are of a similar type and use as the Watercraft listed on Schedule C; provided,

however, that the aggregate gross tonnage of all such additional Watercraft shall not exceed 20% of the gross tonnage of Watercraft listed on Schedule C;

- (2) loading or unloading of any Watercraft at premises owned, leased or controlled by the Insured;
- (3) liability for any **Personal Injury** or **Property Damage** to third parties arising out of or allegedly arising out of **Incidental Watercraft Use** (provided that damage to the hull or any portion, component or equipment of the Watercraft owned, leased or chartered by the Insured or to its cargo contents shall not constitute **Property Damage** to third parties);
- (4) liability for **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of the design, construction, maintenance or sale by the Insured of any Watercraft less than 75 feet in length; or
- (5) **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of or alleged to arise out of design, manufacture, maintenance or sale by the Insured of any component part or equipment of any Watercraft.

**K. POLLUTION**

- (1) (a) liability for **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of the **Discharge of Pollutants** into or upon land or real estate, the atmosphere, or any watercourse or body of water whether above or below ground or otherwise into the environment; or
- (b) liability, loss, cost or expense of any Insured or others arising out of any direction or request, whether governmental or otherwise, that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.

This Exclusion K applies whether or not such **Discharge** of such **Pollutants**:

- (i) results from the Insured's activities or the activities of any other person or entity;
  - (ii) is sudden, gradual, accidental, unexpected or unintended; or
  - (iii) arises out of or relates to industrial operations or the **Waste** or by-products thereof.
- (2) Paragraph (1) of this Exclusion K does not apply to:
    - (a) **Product Pollution Liability**; or

- (b) (i) liability of the Insured for Personal Injury or Property Damage caused by an intentional Discharge of Pollutants solely for the purpose of mitigating or avoiding Personal Injury or Property Damage which would be covered by this Policy; or
- (ii) liability of the Insured for Personal Injury or Property Damage caused by a Discharge of Pollutants which is not Expected or Intended, but only if the Insured becomes aware of the commencement of such Discharge within seven (7) days of such commencement;

provided that the Insured gives the Company written notice in accordance with Section D of Article V of this Policy of such commencement of the Discharge under subparagraphs (2)(b)(i) or (ii) of this Exclusion K within forty (40) days of such commencement. Such notice must be provided irrespective of whether notice as soon as practicable otherwise would be required pursuant to Section A of Article V of this Policy.

#### **L. NUCLEAR**

Liability for:

- (1) Personal Injury, Property Damage or Advertising Liability in the United States, its territories or possessions, Puerto Rico or the Canal Zone (A) with respect to which an Insured under this Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability or (B) resulting from the hazardous properties of nuclear material and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the Insured is or, had this Policy not been issued, would be entitled to indemnity from the United States of America or any agency thereof under any agreement entered into by the United States of America or any agency thereof with any person or organization;
- (2) medical or surgical relief or expenses incurred with respect to Bodily Injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization in the United States, its territories or possessions, Puerto Rico or the Canal Zone;
- (3) injury, sickness, disease, death or destruction resulting from hazardous properties of nuclear material, if:

- (a) the nuclear material (i) is at any nuclear facility owned by or operated by or on behalf of an insured in the United States, its territories or possessions, Puerto Rico or the Canal Zone or (ii) has been discharged or dispersed therefrom;
  - (b) such nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed by or on behalf of an Insured in the United States, its territories or possessions, Puerto Rico or the Canal Zone; or
  - (c) the injury arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of a nuclear facility, but if such facility is located within the United States of America, its territories or possessions, Puerto Rico or the Canal Zone, this subparagraph (c) applies only to injury to or destruction of property at such nuclear facility.
- (4) As used in this Exclusion:
- (a) "hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material," "special nuclear material" and "by-product material" have the meanings given them by the Atomic Energy Act of 1954 or in law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material
    - (i) containing by-product materials; and
    - (ii) resulting from the operation by a person or organization of a nuclear facility included within the definition of nuclear facility under clauses (i) or (ii) of subparagraph (b) below;
  - (b) "nuclear facility" means:
    - (i) any nuclear reactor;
    - (ii) any equipment or device designed or used for (x) separating the isotopes of uranium or plutonium, (y) processing or utilizing spent fuel, or (z) handling, processing or packaging waste;
    - (iii) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at such premises

where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or combination thereof or more than 250 grams of uranium 235;

- (iv) any structure, basin, excavation, premises or place prepared for storage or disposal of waste;
- (c) "nuclear facility" includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- (d) "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (e) with respect to injury or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property or loss of the use thereof.

**M. RADIOACTIVE CONTAMINATION (OUTSIDE U.S.)**

Liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity outside the United States, its territories or possessions, Puerto Rico or the Canal Zone from any nuclear fuel or from any nuclear waste from the combustion, fission or fusion of nuclear fuel.

**N. ERISA**

Liability arising out of any negligent act, error or omission of any Insured, or any other person for whose acts any Insured is legally liable, in the administration of any Insured's Employee Benefits Programs, as defined below, including, without limitation, liability or alleged liability under the Employee Retirement Income Security Act of 1974, as amended, or any similar provisions of state statutory law or common law or any other law.

As used in this Exclusion N, the term "Employee Benefits Programs" means group life insurance, group accident or health insurance, profit sharing plans, pension plans, employee stock subscription plans, workers' compensation, unemployment insurance, social benefits, disability benefits, and any other similar employee benefits.

As used in this Exclusion N, the term "administration" means any of the following acts if such acts are authorized by the Insured:

- (1) giving counsel to employees with respect to the Employee Benefits Programs;

- (2) interpreting the Employee Benefits Programs;
- (3) handling of records in connection with the Employee Benefits Programs; or
- (4) enrolling, terminating or canceling employees under the Employee Benefits Programs.

**O. REPETITIVE STRESS**

Liability arising out of any repetitive motion, repetitive stress, repetitive strain or cumulative trauma disorder, including, without limitation, (i) liability or alleged liability arising from asserted improper design of goods, equipment, machinery or operations, (ii) failure to warn or properly instruct as to use of goods, equipment or machinery or conduct of operations, (iii) improper supervision of use of goods, equipment or machinery or conduct of operations, or (iv) without limiting the foregoing, carpal tunnel syndrome arising or allegedly arising from, without limitation, use of keyboards or finger pads.

**P. SECURITIES, ANTITRUST, ETC.**

Liability arising under any statute, law, ordinance, rule or regulation, whether established pursuant to legislative, administrative, judicial, executive or other authority, of any nation or federal, state, local or other governmental or political body or subdivision thereof relating to:

- (1) the purchase, sale or distribution of securities or offers to purchase or sell securities, or investment counseling or management, including liability under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the so-called "blue-sky" laws of the various states or other jurisdictions;
- (2) antitrust or the prohibition of monopolies, activities in restraint of trade, unfair methods of competition or deceptive acts and practices in trade and commerce including, without limitation, the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, the Lanham Act and the Hart-Scott-Rodino Antitrust Improvements Act;
- (3) fraud or breach of fiduciary duty;
- (4) criminal penalties;
- (5) the failure to pay when due any governmental tax including income, excise, property, value added and sales tax, or tariff, license fee or other governmental fee



which is incidental to the conduct of business, or any assessment, fine, or penalty related thereto;

- (6) copyright, patent or trademark infringement other than **Advertising Liability** with respect to titles or slogans;
- (7) any defect in or impairment to title to real property, including fixtures, whether or not owned by an **Insured**;
- (8) disclosure relating to, or other regulation of sales of or offers to sell, real property;
- (9) liability or alleged liability arising out of employee, officer or director dishonesty; or
- (10) any liability of an employee, officer or director of an **Insured** entity to such **Insured** entity.

No inference shall be made from the express exclusion of liabilities in this Exclusion P that this Policy would otherwise cover such liabilities or similar liabilities.

#### **V. NOTICE OF OCCURRENCE**

##### **A. NOTICE AS SOON AS PRACTICABLE**

If any **Executive Officer** shall become aware of an **Occurrence** likely to involve this Policy, the **Named Insured** shall, as a condition precedent to the rights of any **Insured** under this Policy, give written notice thereof to the **Company** in the manner provided in Section D of this Article V.

Such notice shall be given as soon as practicable and, in any event, during the **Policy Period** or the **Discovery Period**, if applicable, and in accordance with Paragraph 2(b) of Exclusion K, if applicable. Failure to provide written notice as prescribed above shall result in a forfeiture of any rights to coverage hereunder in respect of such **Occurrence**.

##### **B. PERMISSIVE NOTICE**

Any **Insured** may at any time during the **Policy Period** or **Discovery Period** give notice of an **Occurrence** to the **Company** in the manner provided in Section D of this Article V.

##### **C. PERMISSIVE NOTICE OF INTEGRATED OCCURRENCE**

The **Insured** may at its option give written notice to the **Company** of any **Occurrence** as an "**Integrated Occurrence**" by designating it as such and giving such notice in the manner provided in Section D of this Article V. Once the **Insured** gives Notice of **Integrated Occurrence**, all **Personal Injury** or **Property Damage** that falls within the



**Integrated Occurrence** (as provided in the terms, conditions and exclusions of this Policy) shall be treated as such for all purposes under this Policy irrespective of whether this Policy has been terminated after the Insured has given Notice of Integrated Occurrence. The limit of liability applicable to such Integrated Occurrence shall be the limit described in Article II of this Policy.

**D. MANNER OF NOTICE**

- (1) Notice of Occurrence must explicitly be designated as such in writing and must be directed to the Company's Claims Department at the address set forth in Item 8(a) of the Declarations.
- (2) Information (including, without limitation, information about pending and/or prior claims, reserves or payments, loss runs, etc.) submitted (whether face-to-face, by mail, telex, courier, facsimile or otherwise) to the Company's underwriter(s) (whether in an initial or annual renewal application/submission or otherwise) shall not constitute notice of Occurrence. All material directed to the Company at the address indicated in Item 8(b) of the Declarations shall be deemed to have been submitted to the Company's underwriters (unless otherwise acknowledged by the Company in writing).

**VI. CONDITIONS**

**A. PREMIUM**

The premium for this Policy is a flat premium and is not subject to adjustment, except as specifically provided herein. The premium shall be paid to the Company.

**B. INSPECTION**

The Company shall be permitted but not obligated to inspect the Insured's property, operations, books, records and files at any time. Neither the Company's right to make inspections nor the making thereof or of a report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others to determine or warrant that such property or operations are safe or are in compliance with any statute, law, ordinance, rule or regulation.

**C. CROSS LIABILITY**

In the event of a Claim being made by reason of Personal Injury suffered by an employee of one Insured hereunder for which another Insured hereunder is or may be liable, this Policy shall cover such Insured against whom such a Claim is made or may be made in the same manner as if separate policies had been issued to each Insured hereunder.

Nothing contained herein shall operate to increase the Company's limits of liability as set forth in Item 2 of the Declarations.

**D. ASSISTANCE AND COOPERATION**

- (1) The Company shall not be called upon to assume charge of the settlement or defense of any Claim made or suit brought or proceeding instituted against an Insured, but the Company shall have the right and shall be given the opportunity to associate with the Insured or the Insured's underlying insurers or both in the defense and control of any Claim, suit or proceeding relative to any Occurrence where the Claim or suit involves, or appears reasonably likely to involve, the Company, in which event the Insured and the Company shall cooperate in all things in the defense of such Claim.
- (2) The Insured shall furnish promptly all information reasonably requested by the Company with respect to any Occurrence, both with respect to any Claim against the Insured and pertaining to coverage under this Policy.
- (3) If liabilities, losses, costs and/or expenses are in part covered by this Policy and in part not covered by this Policy, the Insured and Company shall use their best efforts to agree upon a fair and proper allocation thereof between covered and uncovered amounts, and the Insured shall cooperate with such efforts by providing all pertinent information with respect thereto.
- (4) Those expenses incurred by the Company on its own behalf in connection with claims representation pursuant to this Condition D shall be at its own expense and shall not be part of Ultimate Net Loss.

**E. APPEALS**

In the event the Insured or the Insured's underlying insurers elect not to appeal a judgment in excess of the retention or the underlying limits, as the case may be, the Company may elect to make such appeal at its own cost and expense and shall be liable for the taxable costs and disbursements of such appeal and post-judgment interest on the judgment appealed from accruing during such an appeal. In no event, however, shall liability of the Company for Ultimate Net Loss exceed the applicable limit of liability plus the costs and expenses of such appeal.

**F. LOSS PAYABLE**

Liability under this Policy with respect to any Occurrence shall not attach unless and until:

- (1) the Insured's underlying insurer(s) or the Insured shall have paid the greater of the amount of any applicable underlying limits or the applicable retention set forth in Item 2(a) of the Declarations; and
- (2) the Insured's liability covered hereunder shall have been fixed and rendered certain either by final judgment against the Insured after actual trial or by settlement approved in writing by the Company, and the Insured shall have paid such liability.

Any consideration paid by the Insured or the Insured's underlying insurers other than in legal currency shall be valued at the lower of cost or market, and any element of the Insured's profit or other benefit to the Insured shall be deducted in determining the value of such consideration. The Company may examine the underlying facts giving rise to a judgment against or settlement by the Insured to determine if, and to what extent, the basis for the Insured's liability under such judgment or settlement is covered by this Policy.

The Insured shall make a definite demand for payment for any amount of the Ultimate Net Loss for which the Company may be liable under this Policy within twelve (12) months after the Insured shall have paid such amount. If any subsequent payments shall be made by the Insured on account of the same Occurrence or Claim, additional demands for payment shall be made similarly from time to time. Such losses shall be due and payable by the Company thirty (30) days after they are respectively paid by the Insured, demanded and proven in conformity with this Policy.

#### **G. REPRESENTATION**

The Named Insured or such other person as it shall designate in Item 5 of the Declarations shall represent and have authority to bind the Named Insured and any and all Insureds hereunder in all matters under this Policy, including, without limitation, payment of premium, negotiation of the terms of renewal or reinstatement and the adjustment, settlement and payment of claims. The Named Insured, by notice to the Company in writing, may designate a substitute representative, which representative shall, effective as of the date such notice is received, be deemed to be designated in Item 5 of the Declarations.

#### **H. OTHER INSURANCE**

If other valid and collectible insurance with any other insurer, whether issued prior hereto, simultaneously herewith or subsequent hereto, is available to the Insured for Ultimate Net Loss covered by this Policy, other than insurance which is expressly and specifically excess of the limits of, or quota share on the same layer as, this Policy, the insurance afforded by this Policy shall be in excess of and shall not contribute with such other insurance. Nothing herein shall be construed to make this Policy subject to the terms, conditions or limitations of other insurance.

If this Policy shall be deemed or required to contribute to Ultimate Net Loss with other insurance and such contribution arises in whole or in part from the failure of the Named Insured to list such other insurance on Schedule B hereto in accordance with the instructions for such Schedule B, then the Named Insured shall indemnify the Company for the amount of any such contribution, and this Policy shall apply as if such other insurance had been so listed.

**I. SUBROGATION**

In the event of any payment hereunder, the Company shall be entitled to exercise rights of subrogation, and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. In such case, the Company will act in concert with all other interested parties, including the Insured, concerned in the exercise of rights of recovery. The apportioning of any amounts which may be so recovered, net of expenses, shall follow the principle that any parties, including the Insured, that shall have paid an amount over and above any payment hereunder shall first be reimbursed up to the amount paid by them. The Company is then to be reimbursed out of any balance then remaining up to the amount paid by it; lastly, the parties of whose interests this coverage is in excess, including the Insured, are entitled to claim the residue, if any.

**J. CHANGES**

Notice to or knowledge possessed by any person shall not effect waiver or change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy. The terms of this Policy may not be waived or changed, except by written endorsement issued to form a part hereof and signed by the Company.

**K. ASSIGNMENT**

Assignment of interest under this Policy shall not bind the Company unless and until its consent is endorsed hereon.

**L. CANCELLATION**

- (1) Coverage A under this Policy may be cancelled on a pro rata basis:
- (a) at the end of any Annual Period by either the Named Insured or the Company by delivering prior written notice to the other;
  - (b) at any time by the Named Insured by delivering written notice to the Company at the address listed in Item 8(b) of the Declarations stating when, but in no event prior to the date such notice is received, cancellation shall be effective;

- (c) at any time by the Company by delivering written notice to the Named Insured stating when, not less than ninety (90) days from the date the notice is received, cancellation shall be effective; or
  - (d) if any Insured shall institute a suit or proceeding against the Company other than as provided in Condition N below (or to enforce an award arising out of such arbitration), at any time thereafter by the Company by delivering written notice to the Named Insured stating when, not less than five (5) days from the date the notice is received, cancellation shall be effective.
- (2) This Policy will be cancelled automatically retroactive to the commencement of the Annual Period, if the premium or proof of payment thereof is not received by the Company within five (5) business days of the commencement of such Annual Period.
  - (3) Coverage B may not be cancelled by either the Named Insured or the Company, except the Company may cancel effective immediately upon the delivery of written notice to the Named Insured if the Insured should institute a suit or proceeding against the Company other than as provided in Condition N below (or to enforce an award arising out of such arbitration).

**M. CURRENCY**

The premiums and losses under this Policy are payable in the respective currency(ies) set forth in Item 6 of the Declarations. Unless otherwise specified in Item 6, such currency(ies) shall be United States dollars. If judgment is rendered, settlement is denominated or another element of Damages is stated in a currency other than in the applicable currency, payment under this Policy shall be made in the applicable currency at the rate of exchange prevailing on the date the final judgment is rendered, the amount of the settlement is agreed upon or the other element of Damages is due, respectively.

**N. ARBITRATION**

- (1) Any dispute, controversy or claim arising out of or relating to this Policy or the breach, termination or invalidity thereof shall be finally and fully determined in London, England under the provisions of the Arbitration Acts of 1950, 1975 and 1979 and/or any statutory modifications or amendments thereto, for the time being in force, by a Board composed of three arbitrators to be selected for each controversy as follows:

Any party may, in the event of such a dispute, controversy or claim, notify the other party or parties to such dispute, controversy or claim of its desire to arbitrate the matter, and at the time of such notification the party desiring arbitration shall notify any other party or parties of the name of

the arbitrator selected by it. The other party who has been so notified shall within thirty (30) calendar days thereafter select an arbitrator and notify the party desiring arbitration of the name of such second arbitrator. If the party notified of a desire for arbitration shall fail or refuse to nominate the second arbitrator within thirty (30) calendar days following the receipt of such notification, the party who first served notice of a desire to arbitrate will, within an additional period of thirty (30) calendar days, apply to a judge of the High Court of Justice of England and Wales for the appointment of a second arbitrator and in such a case the arbitrator appointed by such a judge shall be deemed to have been nominated by the party or parties who failed to select the second arbitrator. The two arbitrators, chosen as above provided, shall within thirty (30) calendar days after the appointment of the second arbitrator choose a third arbitrator. In the event of the failure of the first two arbitrators to agree on a third arbitrator within said thirty (30) calendar day period, either of the parties may within a period of thirty (30) calendar days thereafter, after notice to the other party or parties, apply to a judge of the High Court of Justice of England and Wales for the appointment of a third arbitrator and in such case the person so appointed shall be deemed and shall act as the third arbitrator. Upon acceptance of the appointment by said third arbitrator, the Board of Arbitration for the controversy in question shall be deemed fixed. All claims, demands, denials of claims and notices pursuant to this Condition N shall be given in accordance with Condition U below.

- (2) The Board of Arbitration shall fix, by a notice in writing to the parties involved, a reasonable time and place for the hearing and may prescribe reasonable rules and regulations governing the course and conduct of the arbitration proceeding, including without limitation discovery by the parties.
- (3) The Board shall, within ninety (90) calendar days following the conclusion of the hearing, render its decision on the matter or matters in controversy in writing and shall cause a copy thereof to be served on all the parties thereto. In case the Board fails to reach a unanimous decision, the decision of the majority of the members of the Board shall be deemed to be the decision of the Board and the same shall be final and binding on the parties thereto. Such decision shall be a complete defense to any attempted appeal or litigation of such decision in the absence of fraud or collusion. Without limiting the foregoing, the parties waive any right to appeal to, and/or seek collateral review of the decision of the Board of Arbitration by, any court or other body to the fullest extent permitted by applicable law.

- (4) Any order as to the costs of the arbitration shall be in the sole discretion of the Board, who may direct to whom and by whom and in what manner they shall be paid.
- (5) The Company and the Insured agree that in the event that claims for indemnity or contribution are asserted in any action or proceeding against the Company by any of the Insured's other insurers in any jurisdiction or forum other than that set forth in this Condition N, the Insured will in good faith take all reasonable steps requested by the Company to assist the Company in obtaining a dismissal of these claims (other than on the merits) and will, without limitation, undertake to the court or other tribunal to reduce any judgment or award against such other insurers to the extent that the court or tribunal determines that the Company would have been liable to such insurers for indemnity or contribution pursuant to this Policy. The Insured shall be entitled to assert claims against the Company for coverage under this Policy, including, without limitation, for amounts by which the Insured reduced its judgment against such other insurers in respect of such claims for indemnity or contribution, in an arbitration between the Company and the Insured pursuant to this Condition N, which arbitration may take place before, concurrently with and/or after the action or proceeding involving such other insurers; provided, however, that the Company in such arbitration in respect of such reduction of any judgment shall be entitled to raise any defenses under this Policy and any other defenses (other than jurisdictional defenses) as it would have been entitled to raise in the action or proceeding with such insurers (and no determination in any such action or proceeding involving such other insurers shall have collateral estoppel, res judicata or other issue preclusion or estoppel effect against the Company in such arbitration, irrespective of whether or not the Company remained a party to such action or proceeding).

**O. LAW OF CONSTRUCTION AND INTERPRETATION**

This Policy, and any dispute, controversy or claim arising out of or relating to this Policy, shall be governed by and construed in accordance with the internal laws of the State of New York, except insofar as such laws:

- (1) may prohibit payment in respect of punitive damages hereunder;
- (2) pertain to regulation under the New York Insurance Law, or regulations issued by the Insurance Department of the State of New York pursuant thereto, applying to insurers doing insurance business, or issuance, delivery or procurement of policies of insurance, within the State of New York or as respects risks or insureds situated in the State of New York; or
- (3) are inconsistent with any provision of this Policy;



provided, however, that the provisions, stipulations, exclusions and conditions of this Policy are to be construed in an evenhanded fashion as between the Insured and the Company; without limitation, where the language of this Policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant provisions, stipulations, exclusions and conditions (without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the Insured or the Company or reference to the "reasonable expectations" of either thereof or to contra proferentem and without reference to parol or other extrinsic evidence). To the extent that New York law is inapplicable by virtue of any exception or proviso enumerated above or otherwise, and as respects arbitration procedure pursuant to Condition N, the internal laws of England and Wales shall apply.

**P. LIABILITY OF THE COMPANY**

The Named Insured and the Insured agree that the liability and obligations of the Company hereunder shall be satisfied from the funds of the Company alone and that the individual shareholders of the Company shall have no liability hereunder to the Named Insured or the Insured.

**Q. POLICY EXTENSION**

Subject to Condition L, Coverage A of this Policy may be extended at the expiration of each Annual Period for another Annual Period, subject only to agreement between the Company and the Named Insured as to the applicable premium and such other terms and conditions as the Company and the Named Insured may mutually deem appropriate. Coverage A shall expire at the end of an Annual Period if not extended (or upon cancellation thereof). Where Coverage A (or Coverage B) is cancelled or not extended, such cancellation or non-extension shall not affect the rights of the Insured as respects any Occurrence or Integrated Occurrence of which notice was given in accordance with the provisions of this Policy prior to such cancellation or non-extension and shall not limit whatever rights the Insured otherwise would have under this Policy as respects actual or alleged Personal Injury, Property Damage or Advertising Liability included in such Occurrence or Integrated Occurrence taking place subsequent to such cancellation or non-extension.

**R. REINSTATEMENT**

- (1) At the time of each annual Policy extension of Coverage A, the aggregate limit of liability set forth in Item 2(b) of the Declarations shall, unless otherwise agreed in writing between the Named Insured and the Company, automatically be reinstated with respect to covered Occurrences of which notice is first given during the following Annual Period. There shall be no separate premium charged for this automatic reinstatement in addition to that provided for in Condition Q above. There shall be no reinstatement of the aggregate limit of



liability, unless otherwise agreed in writing by the Company, as respects Coverage B, and the remaining amount, if any, of the aggregate limit for the final Annual Period under Coverage A shall apply as respects the Discovery Period.

- (2) If during any Annual Period, as respects Coverage A only, the aggregate limit of liability set forth in Item 2(b) ("Original Aggregate Limit") of the Declarations is or may be impaired by virtue of Occurrence(s) of which notice has been given previously during such Annual Period, then the Named Insured shall be entitled to elect one reinstatement of all or any portion of such aggregate limit, based on the following terms and conditions:

- (a) Such reinstatement must be elected in writing by the Named Insured, which election shall specify the amount being reinstated, not to exceed an amount equal to the Original Aggregate Limit ("Reinstatement Amount"), and must be accompanied by payment of the reinstatement premium as provided in subparagraph (c) below. Such reinstatement shall be effective as of the date of the receipt by the Company of such written election and premium ("Reinstatement Date").

- (b) (i) There shall be an aggregate sublimit of liability for all Occurrences of which notice is first given to the Company at any time during the entire Annual Period in an amount equal to the Original Aggregate Limit as respects all Occurrences of which the Named Insured is aware at the Reinstatement Date (including, without limitation, all Occurrences of which notice was first given during such Annual Period prior to such date and all Integrated Occurrences including Personal Injury or Property Damage which was included in any such prior noticed Occurrences). The Named Insured shall be deemed to have been aware of an Occurrence if any Executive Officer was aware of any actual or alleged Personal Injury, Property Damage or Advertising Liability which was included in such Occurrence, irrespective of whether or not such person believed or expected such Occurrence was likely to involve this Policy.

(ii) The aggregate limit of liability for all Occurrences of which the Named Insured is not aware at the Reinstatement Date and of which notice is first given to the Company during the portion of the Annual Period on or subsequent to the Reinstatement Date and during any Discovery Period in the event Coverage A terminates at the end of such Annual Period shall be:

- (x) any unused portion of the Original Aggregate Limit pertaining to the portion of the Annual Period prior to the Reinstatement Date and to any Occurrences of which the Named Insured is aware at such date; plus

(y) the Reinstatement Amount.

In no event shall the aggregate limit of liability under this subparagraph (2)(b)(ii) exceed the Original Aggregate Limit.

(iii) In no event shall the aggregate limit of liability of the Company in respect of all Occurrences of which notice is first given to the Company during the entire Annual Period exceed the sum of the Original Aggregate Limit and the Reinstatement Amount.

(c) The reinstatement premium shall be an amount determined by the Company, but in no event shall this exceed one hundred and twenty-five percent (125%) of the total premium for the Annual Period in which the reinstatement takes place.

#### **S. DISCOVERY PERIOD**

- (1) In the event of Termination of Coverage A, other than by reason of cancellation for non-payment of premium or due to institution of a proceeding other than as contemplated by Condition N, the Named Insured may elect, prior to the Termination Date of such Coverage A, to secure Coverage B for the following Annual Period for such Insureds as the Named Insured shall designate, by giving the Company written notice of such election and paying to the Company the annual premium set forth in the attached Schedule D no later than the date of commencement of such Annual Period.
- (2) In the event that the Named Insured elects to secure Coverage B pursuant to paragraph (1) above, the Named Insured may elect to continue such Coverage B for any number of additional Annual Periods by giving the Company written notice of each election for a subsequent Annual Period and paying to the Company the corresponding annual premium set forth in the attached Schedule D no later than the end of the Annual Period for which such Coverage B was previously elected. If the Named Insured shall fail to elect Coverage B for any Annual Period, it may not elect Coverage B for any subsequent Annual Period.
- (3) For the purpose of application of retentions and limits of liability, notice of an Occurrence given during the Discovery Period shall be deemed to have been given during the final Annual Period in the Policy Period. The aggregate limit of liability shall not be reinstated for the Discovery Period.

#### **T. FORMER SUBSIDIARIES, AFFILIATES AND ASSOCIATED COMPANIES**

If any subsidiary, affiliate or associated company of the Named Insured which is an Insured hereunder shall cease to be such a subsidiary, affiliate or associated company of the Named Insured, then at such time Coverage A shall automatically terminate as to

such former subsidiary, affiliate or associated company. Coverage A shall continue with respect to the Named Insured and any other entity which remains an Insured for its own liability, if any, arising out of its prior ownership of or affiliation or association with the former subsidiary, affiliate or associated company. At such time of such automatic termination of coverage, Coverage B shall, unless the Named Insured otherwise specifies, automatically incept as to such former subsidiary, affiliate or associated company and continue in force for the balance of the Annual Period, without additional payment or return of any premium. Prior to the end of the Annual Period, such former subsidiary, affiliate or associated company may, with written consent received by the Company from the Named Insured, elect to extend Coverage B beyond the end of the Annual Period on such terms and conditions, for such period, subject to such limits and for such additional premium as may be agreed with the Company.

**U. NOTICE**

All notices under any provision of this Policy shall be in writing and given by hand, prepaid express courier, airmail or telecopier properly addressed to the appropriate party and will be deemed as having been effected only upon actual receipt. Notice to any Insured may be given to the Named Insured at the address shown in Item 1(b) of the Declarations or to such other person as the Named Insured shall designate in Item 5 of the Declarations.

**V. HEADINGS**

The descriptions in the headings and sub-headings of this Policy are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

**SCHEDULE A  
ADDITIONAL INSUREDS**

**SCHEDULE B  
UNDERLYING INSURANCE**

**SCHEDULE C  
WATERCRAFT**

**SCHEDULE D**

If the Named Insured shall elect to obtain Coverage B pursuant to Condition S of this Policy, the annual premium charge for each Annual Period for Coverage B shall be computed by multiplying the premium for the last Annual Period in the Policy Period by the applicable factor set forth in the following table:

**Coverage B****Annual Premium Charge**

1st Annual Period.....	30%
2nd Annual Period .....	20%
3rd Annual Period .....	10%
4th Annual Period .....	10%
5th and each additional Annual Period .....	9%







Insured: Universal Health Services, Inc.  
Policy No: 9810-1092-UMB-2006  
Endorsement No: 1  
Effective Date: January 1, 2006

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**PREVIOUSLY NOTIFIED OCCURRENCES OR CLAIMS AND/OR KNOWN  
OCCURRENCES EXCLUSION ENDORSEMENT**

Notwithstanding any other provision of this Policy, it is hereby agreed that this Policy shall not apply to, and the Company shall have no liability hereunder to the Named Insured in respect of:

**A. PREVIOUSLY NOTIFIED OCCURRENCES OR CLAIMS**

Any Occurrence, including any "Integrated Occurrence", "Batch Occurrence" or similar term as defined under any other Policy, Personal Injury, Property Damage or Advertising Liability or any Claim or potential Claim arising therefrom, which was the subject of any notice by any Insured to any insurer prior to the Inception Date.

**B. KNOWN OCCURRENCES**

Actual or alleged liability arising from any Occurrence, including an "Integrated Occurrence" of which any Executive Officer was aware of prior to the Inception Date, irrespective of whether or not such person believed or expected such Occurrence was likely to involve this Policy.

All other terms and conditions of this Policy remain unchanged.

**MAX RE LTD.**

By:

A handwritten signature in dark ink, appearing to read "Michael S. Morgan".  
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR



Insured: Universal Health Services, Inc.  
 Policy No: 9810-1092-UMB-2006  
 Endorsement No: 2  
 Effective Date: January 1, 2006

**INCORPORATION OF SCHEDULES BY REFERENCE ENDORSEMENT,  
WITH WARRANTY**

Schedules A, B and C dated as of the date(s) listed below are hereby incorporated by reference and shall be deemed to be attached to the Policy; provided, however, that if the Named Insured has not provided an up-to-date Schedule B prior to the issuance of this Endorsement, (i) the Named Insured covenants to provide such an updated Schedule B, completed in accordance with applicable instructions, as soon as is practicable, which schedule automatically shall be incorporated by reference and deemed to be attached to the Policy, and (ii) the Named Insured warrants and represents that it has arranged for replacement insurance (excess but not primary) with coverage at least as broad and limits at least as great as the insurance listed on the most recent Schedule B supplied to the Company in respect of this Policy and covenants that such replacement insurance will be listed on the updated Schedule B to be provided as set forth above.

Schedule A Date: October 1, 2005

Schedule B Date: October 1, 2005

Schedule C Date: October 1, 2005

It is agreed that the only purposes of Schedules A, B and C are to set forth the following information as respects the corresponding indicated provisions of the Policy, and nothing contained in such Schedules shall affect application of any other provisions of the Policy:

<u>Schedule</u>	<u>Information</u>	<u>Policy Provision</u>
A	additional insured entities	III.P (2) (b)
B	underlying insurance	II.A (1)
C	exceptions to Watercraft exclusion	IV.J

MAX RE LTD.

By:

Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006



Page 1 of 2

Insured: Universal Health Services, Inc.  
Policy No: 9810-1092-UMB-2006  
Endorsement No: 3  
Effective Date: January 1, 2006

#### **SPECIAL RISKS MULTIPLE RETENTION ENDORSEMENT**

1. With respect to the specific risk(s) described below, it is agreed that the Per Occurrence Retention Amount set forth in Item 2(a) of the Declarations shall be amended to be the amounts respectively set forth with respect thereto; provided, however, that all other declarations, provisions, stipulations, exclusions and conditions of the Policy shall remain in effect; provided further, that the Per Occurrence Retention Amount set forth in Item 2(a) of the Declarations shall not be affected by this Endorsement except as to the specific risks listed below.
2. Where different Per Occurrence Retention Amounts apply to different elements of Personal Injury, Property Damage and/or Advertising Liability arising out of a single Occurrence, Ultimate Net Loss (but only to the extent not paid or indemnified under the Policy) which is subject to one Per Occurrence Retention Amount shall also erode any equal or higher Per Occurrence Retention Amount(s), but Ultimate Net Loss which is subject to a higher Per Occurrence Retention Amount shall not erode a lower Per Occurrence Retention Amount; i.e., the Per Occurrence Retention Amounts are not cumulative under Article II.A(2) of the Policy as respects a single Occurrence, but no recovery may be had with respect to any specific risk until the Insured (and/or the Insured's underlying insurers) has satisfied the full Per Occurrence Retention Amount with respect thereto by actual payment of Ultimate Net Loss.
3. Nothing herein shall affect the application of the Policy as excess of all underlying insurances; without limiting the foregoing, where separate underlying insurances apply in respect to a single Occurrence, this Policy shall be excess of the cumulative coverage thereunder as provided in Articles II.A(1) and VI.H of the Policy.
4. This Endorsement applies to all Occurrences with respect to which notice of Occurrences or Claim is given to the Company on or after the Effective Date shown above notwithstanding that the event or conditions commenced or the Personal Injury or Property Damage took place in whole or in part prior to the Effective Date.

**SPECIFIC RISK(S): Professional Liability**

**AMENDED PER OCCURRENCE RETENTION AMOUNT(S):  
\$5M/\$5M Buffer vs \$15M Each & Every**

Page 2 of 2

Insured: Universal Health Services, Inc.  
Policy No: 9810-1092-UMB-2006  
Endorsement No: 3  
Effective Date: January 1, 2006

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### **SPECIAL RISKS MULTIPLE RETENTION ENDORSEMENT**

Solely for the purposes of this Endorsement, the following definition(s) shall apply:

#### **Professional Liability**

"Professional Liability" means liability or alleged liability arising or allegedly arising out of any act, error or omission in the rendering of professional services, including but in no event limited to, the rendering of architectural, engineering, legal, accounting, data processing, consulting or investment advisory services.

**MAX RE LTD.**

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006





Insured: Universal Health Services, Inc.  
Policy No. 9810-1092-UMB-2006  
Endorsement No: 4  
Effective Date: January 1, 2006

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#### ENDORSEMENT AS RESPECTS PREMIUM

The Named Insured has paid a deposit premium of [REDACTED]. However, the Named Insured shall pay a Policy Period total premium ("Total Premium"), determined as provided below.

The Total Premium shall be determined as follows:

- (A) The minimum premium for the policy period is [REDACTED] ("Minimum Premium"), and the maximum premium for the policy period is [REDACTED] ("Maximum Premium"). Subject always to being not less than the Minimum Premium and not more than the Maximum Premium, the Total Premium for the Policy Period shall be calculated as follows: (a) all Ultimate Net Loss (net of subrogation recoveries (after deducting expenses); hereinafter "Recoveries") that the Company incurs as respects the Policy Period ("Total Ultimate Net Loss Amount") multiplied by 100/75 (1.333) equals the Total Premium payable to the Company ("Total Calculated Premium").
- (B) The premium calculation shall occur as follows:
  - (i) The determination of the Total Ultimate Net Loss Amount and the Total Calculated Premium shall not terminate at the end of the Policy Period (whether due to expiration, cancellation or otherwise, unless otherwise agreed in writing by the parties), but shall continue as respects any Ultimate Net Loss incurred or Recoveries received thereafter.
  - (ii) As of the first one-year anniversary of the termination of the Policy Period, the Company shall determine the Total Calculated Premium then due for the Policy Period as set forth in paragraph (a) above. Subject always to the Minimum Premium and Maximum Premium, if the Total Calculated Premium exceeds the current balance of the premium previously paid ("Current Balance"), the Named Insured shall pay to the Company the amount of the difference within ten (10) days of receipt of notice thereof and if the Current Balance exceeds the Total Calculated Premium, subject to the provisions of subparagraph (b)(iv) below, the Company shall pay the amount of the difference to Named Insured within ten (10) days of the determination thereof. The Company shall make the determination set forth in this subparagraph (b)(ii), and all subsequent determinations set forth in paragraph (b)(iii) below, within 30 days after the respective anniversary.

Insured: Universal Health Services, Inc.  
Policy No. 9810-1092-UMB-2006  
Endorsement No: 4  
Effective Date: January 1, 2006

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#### ENDORSEMENT AS RESPECTS PREMIUM

- (iii) As of each anniversary after the first anniversary of the termination of the Policy Period, continuing until the Company and the Named Insured agree in writing that there is no further need to so, subject always to the Minimum Premium and Maximum Premium, the Company shall determine whether the Total Calculated Premium has increased or decreased from its immediately preceding anniversary calculation, by applying the calculation set forth in paragraph (a) above to the Total Ultimate Net Loss Amount after adding thereto any Ultimate Net Loss paid by the Company and subtracting therefrom any Recoveries received by the Company during the preceding one-year period. On the same time schedule set forth in subparagraph (b)(ii), and taking into account payments by offset as set forth in subparagraph (b)(iv) below, the Named Insured shall pay the Company the amount of any increase or the Company shall pay the Named Insured the amount of any decrease.
- (iv) As respects any amounts due by the Company to the Named Insured pursuant to subparagraph (b)(ii) or (iii), or for Ultimate Net Loss payable under this Policy after termination of the Policy Period, the Company may offset such amounts from any amounts then due, or subject to become due, to the Named Insured under this Policy. Without limiting the foregoing, the Company may offset from the payment of Ultimate Net Loss due the Insured, but subject to not exceeding the Maximum Premium, any increase in premium resulting from such Ultimate Net Loss. (For example, if the Maximum Premium were \$2,000,000 and if there is \$3,000,000 of Ultimate Net Loss due from the Company to the Insured as respects an Occurrence, and assuming as of that time the Current Balance of premium paid is \$1,400,000, the formula set forth in paragraph (a) would result in an additional premium of \$600,000 (the difference between \$1,400,000 and \$2,000,000 Maximum Premium) and the Company would offset that against the \$3,000,000, thus paying the Insured \$2,400,000.)





Page 3 of 3

Insured: Universal Health Services, Inc.  
Policy No. 9810-1092-UMB-2006  
Endorsement No: 4  
Effective Date: January 1, 2006

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- (C) Notwithstanding the provision of Condition L of this Policy that Coverage A under the Policy may be cancelled on a *pro rata* basis, if the Named Insured cancels this Policy, earned premium will be the greater of (i) the amount computed in accordance with the customary pro-rata rate table and procedure or (ii) the Minimum Premium stated in paragraph (a) above.

All other terms and conditions of this Policy remain unchanged.

MAX RE LTD.

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR



Insured: Universal Health Services, Inc.  
Policy No: 9810-1092-UMB-2006  
Endorsement No: 5  
Effective Date: January 1, 2006

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#### INTEGRATED OCCURRENCE RETENTION ENDORSEMENT

It is hereby agreed by and between the Company and the Named Insured, effective as of the above Effective Date:

As respects each Integrated Occurrence, and only as respects Integrated Occurrences, Article II, Section A (2) shall be replaced by the following:

- (2) the per Integrated Occurrence retention amount of \$25,000,000 (twenty five million dollars) which may be satisfied, in whole or in part, by the Ultimate Net Loss that eroded the per Occurrence retention amount(s) of the "Original Occurrence(s)" (as defined in Article II, Section C of this Policy).

All other terms and conditions of the Policy remain unchanged.

MAX RE LTD.

By:

A handwritten signature in black ink, appearing to read "Michael S. Morgan".

Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR





Page 1 of 4

Insured: Universal Health Services, Inc.  
Policy No: 9810-1092-UMB-2006  
Endorsement No: 6  
Effective Date: January 1, 2006

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**MANAGED CARE ERRORS AND OMISSIONS  
LIABILITY EXTENSION ENDORSEMENT**

It is hereby agreed that this Policy is extended to cover liability for Damages on account of Bodily Injury actually or allegedly caused by a Managed Care Incident, subject to the provisions of this Endorsement.

1. The definition of Occurrence contained in the Policy is amended to include Managed Care Incident, as defined below.
2. As used in this Endorsement, Managed Care Incident means any of the following:
  - (a) any act, error, or omission by an Insured in the furnishing of services related to the business operations of the Insured's managed care organization which actually or allegedly causes Bodily Injury, including without limitation any of the following:
    - (1) disability management services, including but not limited to medical care coordination, social security evaluation assessment, vocational assessment, and vocational rehabilitation;
    - (2) medical costs management services including but not limited to ambulatory surgery review, computerized medical bill review services, DRG validation, hospital bill auditing services, independent medical examination services, medical case management services, medical referral services, physician bill review services, and second opinion services;
    - (3) utilization review services, including but not limited to ancillary services review such as adult day care review, chiropractic review, home health care and home maker services review, nursing facility admission review, private duty and skilled nursing review, and psychiatric review; hospital pre-admission, emergency admission, continued-stay, retrospective and discharge planning review; local medical management, Peer Review; and surgical review;
    - (4) network provider services, including but not limited to selection, credentialing and contracting health care providers such as physicians, hospitals and ancillary providers, and performing network management and administration services;
    - (5) psychiatric managed care services, including but not limited to providing psychiatric and substance abuse network, case management and utilization review services;
    - (6) health education, health information, and health decision counseling services, including but not limited to: helping people assess their need for information, helping

MAX-OCR

Insured: **Universal Health Services, Inc.**  
 Policy No: **9810-1092-UMB-2006**  
 Endorsement No: **6**  
 Effective Date: **January 1, 2006**

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people understand information they receive from health practitioners and other sources; providing information about alternative diagnostic procedures and treatment; helping people work with health practitioners to improve their ability to use medical services; and supporting people to be more involved in their own health care decision making through the above, plus serving as ongoing source of information and education;

- (7) employee assistance services, including but not limited to counseling, personal and behavioral problem assessment, referral, and similar support and assistance services provided to customers' employees and others including family members and other persons residing or closely associated with employees. Such services may include but are not limited to the following: counseling and similar services made available on worksite or off worksite, referral to professional or social service resources; consultation and advice concerning medical plan benefits; managed care (including treatment planning, precertification and utilization review) with respect to mental and nervous and substance abuse cases, which may include health benefits reduction or increase; management and supervisory training programs; procedures for referral of employees by management and supervisors; educational programs and materials;
  - (8) managed care marketing services;
  - (9) managed care quality assurance management activities;
  - (10) managed care claims handling activities, including but not limited to adjudicating health claim based on medical necessity;
  - (11) administration and management of managed care services and operations including but not limited to enrollment processing and eligibility determination;
  - (12) managed care plan design services;
  - (13) health data analysis;
  - (14) health care referral services;
  - (15) benefit administration
  - (16) other managed care services, including but not limited to other necessity of care, quality of care, cost of care and utilization of care services;
- (b) any act, error, or omission in the rendering of or failure to render Medical Services by any person or entity who is not an Insured but for whose acts, errors, or omissions an Insured is vicariously liable; provided, however, that Managed Care Incident shall not mean or include any act, error, or omission in the rendering of or failure to render Medical Services by an Insured. As used in this Endorsement, "Medical Services"



Insured: Universal Health Services, Inc.  
 Policy No: 9810-1092-UMB-2006  
 Endorsement No: 6  
 Effective Date: January 1, 2006

means health care, medical care, or medical treatment provided to any person, including medical, surgical, dental, psychiatric, mental health, chiropractic, osteopathic, nursing, or other professional health care; the use, prescription, furnishing, or dispensing of medications, drugs, blood, blood products, tissue, or medical, surgical, dental, or psychiatric supplies, equipment, or appliances in connection with such care; the furnishing of food or beverages in connection with such care; and the handling of, or the performance of post-mortem examination on, human bodies.

**Managed Care Incident** shall not mean or include any act, error, or omission which actually or allegedly causes only mental injury or mental anguish, but which does not actually or allegedly cause **Bodily Injury**.

All **Bodily Injury** to any one person caused by acts, errors, or omissions as described in Sections 2(a) and 2(b) of this Endorsement shall be deemed caused by one **Managed Care Incident**, regardless of the number of such acts, errors, or omissions or Insureds involved, or the period of time over which such acts, errors or omissions took place. That one **Managed Care Incident** shall be deemed to have happened on the date when the first act, error, or omission included in such acts, errors, or omissions took place. The **Limit of Liability and Retention** applicable to that one **Managed Care Incident** shall be the **Limit of Liability and Retention** for each Occurrence stated in Item 2(a) of the Declarations in effect at the time when notice of that **Managed Care Incident** is first given to the Company in writing during the Policy Period or Discovery Period, if purchased.

In no case shall **Bodily Injury** to two or more persons caused by acts, errors, or omissions as described in Section 2(a) or 2(b) of this Endorsement be deemed to have been caused by, or deemed to be encompassed within, one **Managed Care Incident** or Occurrence.

3. No **Bodily Injury** caused by a **Managed Care Incident** shall be encompassed, in whole or in part, by any **Integrated Occurrence**.
4. This Endorsement excludes, and does not apply to, any liability:
  - (a) based upon, arising out of, or in any way involving any actual or alleged dishonest, fraudulent, criminal, or malicious act, error, or omission by any Insured, including without limitation any actual or alleged deceptive trade practice, fraudulent inducement, or misrepresentation made in marketing;
  - (b) based upon, arising out of, or in any way involving any actual or alleged violation of any law, statute, ordinance, rule, or regulation by any Insured, including without limitation any actual or alleged violation of any Consumer Protection Act, Deceptive Trade Practices Act, or similar provisions of any federal, state, or local law;



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Insured: Universal Health Services, Inc.  
Policy No: 9810-1092-UMB-2006  
Endorsement No: 6  
Effective Date: January 1, 2006

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- (c) based upon, arising out of, or in any way involving any actual or alleged gaining of any profit, remuneration, or advantage by any Insured to which the Insured was not legally entitled;
  - (d) based upon, arising out of, or in any way involving any actual or alleged: (i) failure to obtain or effect any form, policy, plan, or program of insurance, reinsurance, self-insurance, suretyship, or bond; or (ii) commingling or mishandling of funds;
  - (e) for fees, amounts, benefits, or coverages actually or allegedly owed to any person or entity under any contract, health care plan, insurance policy, reinsurance policy, or plan or program of self insurance.
5. The coverage provided by this Endorsement is subject to the **Limits of Liability and Retentions** stated in Item 2 of the Declarations. This Endorsement does not increase the **Limits of Liability** stated in Item 2 of the Declarations.

All other terms and conditions of the Policy which are not inconsistent with this Endorsement continue to apply to this Endorsement.

MAX RE LTD.

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR





Insured: Universal Health Services, Inc.  
Policy No: 9818-1092-UMB-2006  
Endorsement No: 7  
Effective Date: January 1, 2006

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**MOLD (INCLUDING TOXIC MOLD)  
AND/OR FUNGI EXCLUSION ENDORSEMENT**

As of the above Effective Date, the following Exclusion is added to Article IV EXCLUSIONS of the Policy:

**MOLD (INCLUDING TOXIC MOLD) AND/OR FUNGI**

**Personal Injury, Property Damage or Advertising Injury** actually or allegedly arising out of, or actually or allegedly directly or indirectly caused by, **Mold**.

"Mold" means any species, kind or variety of mold, including, but not limited to, so-called "toxic mold", or any other fungus or similar biological organism (collectively "Mold Organism"), or any substance or material contained in, growing out of, or secreted, emitted or otherwise separated from, any Mold Organism (collectively "Mold Substance") or any substance or material resulting from the transformation of, decomposition of, and/or combination of other materials or substances with, any Mold Organism or Mold Substance.

All other terms and conditions of the Policy remain unchanged.

**MAX RE LTD.**

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR



Insured: Universal Health Services, Inc.  
Policy No: 9810-1092-UMB-2006  
Endorsement No: 8  
Effective Date: January 1, 2006

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**AMENDMENT OF EXCLUSION G. ENDORSEMENT**

It is hereby agreed that Exclusion G. of the Policy, "WAR", is deleted and replaced with the following:

**"G. WAR**

**Personal Injury, Property Damage or Advertising Liability directly or indirectly occasioned by, happening through or in consequence of war, invasion, hostile action of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, terrorism, military terrorism, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority."**

**MAX RE LTD.**

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR



Insured: Universal Health Services, Inc.  
Policy No: 9810-1092-UMB-2006  
Endorsement No: 9  
Effective Date: January 1, 2006

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#### SEVERAL LIABILITY FOR QUOTA SHARE COVERAGE

In consideration of the premium charged, it is agreed that the Company's liability for Ultimate Net Less under this Policy is solely for its proportionate or quota share of the applicable limits of liability as set forth in Item 2 of the Declarations. Further, the Company's liability is several and not joint, and, in no event shall the Company be liable for the proportionate or quota share of any other insurer or entity participating on the same layer of coverage as this Policy.

All other terms and conditions of this Policy remain unchanged,

MAX RE LTD.

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR



Page 1 of 2

Insured: Universal Health Services, Inc.  
Policy No. 9810-1092-UMB-2006  
Endorsement No: 10  
Effective Date: January 1, 2006

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### PREMIUM ADJUSTMENT ENDORSEMENT

It is hereby agreed by and between the Company and the Named Insured as of the above Effective Date ("Effective Date"):

As respects each Annual Period, the premium set forth in Item 7 of the Declarations ("Annual Period Premium") is not subject to adjustment, except in any instance where the total Business Units (as defined below) of the Named Insured (and all consolidated subsidiaries and affiliates) ("Total Business Units") for such Annual Period exceeds the Threshold Business Unit Amount set forth in Item 2 below; in such case, the Company in its discretion may impose an additional premium equal to the product of (i) the number of Business Units by which the Total Business Units exceeds the Threshold Business Units Amount times (ii) the Dollars Per Excess Business Unit Amount set forth in Item 3 below (for example, if the Threshold Business Units Amount is 1,000, the Total Business Units is 1,100, and the Dollar Per Excess Business Unit Amount is \$100, then the additional premium is calculated as follows:  $1,100 - 1,000 = 100 \times \$100 = \$10,000$ ). The foregoing calculation shall be made for each Annual Period in which the Total Business Units exceeds the Threshold Business Units Amount, always using the same Threshold Business Units Amount. Any additional premium shall be paid as follows: (a) if the increase is due to an acquisition, merger or similar transaction (collectively, "Acquisition"), the Named Insured shall inform the Company at or prior to the Acquisition of its best estimate of the increase in Total Business Units expected from such Acquisition, and, as respects the Annual Period in which such Acquisition occurs, shall pay the additional premium within 10 days after notification of the amount thereof by the Company (after the end of such Annual Period, if necessary, an adjustment will be made to reflect any difference between the expected and actual increase due to the Acquisition), and (b) as respects each Annual Period (including one in which (a) applies), the Named Insured, on or prior to the end thereof, shall inform the Company of its best estimate of the Total Business Units (including those attributable to an Acquisition(s)) and shall pay any additional premium due within the later of 30 days after the end of such Annual Period or 10 days after notification of the amount thereof by the Company (any change in additional premium resulting from a difference between the estimates and the actual figures when finally determined shall be adjusted between the Named Insured and the Company within 10 days after the determination thereof).

#### Definition of Total Business Units

"Business Units" are as defined in Item 1 below. The basis of determining the Total Business Units for each Annual Period (e.g., average daily basis, for the entire Annual Period, etc.) shall be included in the Item 1 definition.

MAX-OCR



Insured: Universal Health Services, Inc.  
Policy No. 9810-1092-UMB-2006  
Endorsement No: 10  
Effective Date: January 1, 2006

Page 2 of 2

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**PREMIUM ADJUSTMENT ENDORSEMENT**

- Items: 1. Definition of Business Units: Hospital Beds  
2. Threshold Business Units Amount: 8,883  
3. Dollars per Excess Business Unit Amount: ~~100~~ Per Bed

**MAX RE LTD.**

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR





Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 22  
Effective Date: January 1, 2006

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#### CHANGE OF POLICY NUMBER ENDORSEMENT

Immediately prior to the above Effective Date ("Effective Date"), this Policy had the Policy Number set forth in Item 1 below ("Old Policy Number"). As of the Effective Date, pursuant to Article VI, Condition Q of this Policy and the Coverage "A" Extension And Incorporation Of Schedules By Reference Endorsement with the same Effective Date, Coverage A of this Policy was extended for another Annual Period and this Policy was assigned the "Policy No." set forth above as a new Policy Number ("New Policy Number").

This Endorsement has been issued solely for the purpose set forth in the preceding paragraph and nothing in this Endorsement shall create any coverage that would not exist if the Old Policy Number had continued as the Policy Number of this Policy.

Item 1: Old Policy Number: 6049-572-UMB-2005

MAX RE LTD.

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR



Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 23  
Effective Date: January 1, 2006

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**COVERAGE "A" EXTENSION AND INCORPORATION OF SCHEDULES  
BY REFERENCE ENDORSEMENT**

1. In consideration of the additional premium stated below, it is hereby agreed that Coverage A of the Policy is extended for another Annual Period commencing at 12:01 A.M. prevailing time at the address of the Named Insured on the Extension Date listed below. Except if a Change of Limit and/or Retention Endorsement is issued and as indicated on any such endorsement, all other limitations, terms, exclusions and conditions of the Policy remain unchanged, including, without limitation, paragraph (1) of Article VI. R regarding automatic reinstatement of the aggregate limit of liability set forth in Item 2(b) of the Declarations.
2. Schedules A, B and C dated as of the date(s) listed below are hereby incorporated by reference and shall be deemed to be attached to the Policy; provided, however, that if the Named Insured has not provided an up-to-date Schedule B prior to the issuance of this Endorsement, (i) the Named Insured covenants to provide such an updated Schedule B, completed in accordance with applicable instructions, as soon as is practicable, which schedule automatically shall be incorporated by reference and deemed to be attached to the Policy, and (ii) the Named Insured warrants and represents that it has arranged for replacement insurance (excess but not primary) with coverage at least as broad and limits at least as great as the insurance listed on the most recent Schedule B supplied to the Company in respect of this Policy and covenants that such replacement insurance will be listed on the updated Schedule B to be provided as set forth above.

Additional Premium: \$[REDACTED]  
Extension Date: January 1, 2006  
Schedule A Date: October 1, 2005  
Schedule B Date: October 1, 2005  
Schedule C Date: October 1, 2005

Page 2 of 2

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 23  
Effective Date: January 1, 2006

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**COVERAGE "A" EXTENSION AND INCORPORATION OF SCHEDULES  
BY REFERENCE ENDORSEMENT CONT'D.**

It is agreed that the only purposes of Schedules A, B and C are to set forth the following information as respects the corresponding indicated provisions of the Policy, and nothing contained in such Schedules shall affect application of any other provisions of the Policy:

<u>Schedule</u>	<u>Information</u>	<u>Policy Provision</u>
A	additional insured entities	III.P (2) (b)
B	underlying insurance	II.A (1)
C	exceptions to Watercraft exclusion	IV.J

MAX RE LTD.

By: 

Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR





Page 1 of 3

Insured: Universal Health Services, Inc.  
 Policy No. 10658-1095-UMB-2006  
 Endorsement No: 24  
 Effective Date: January 1, 2006

### CHANGE OF LIMIT, RETENTION AND/OR RETROACTIVE DATE ENDORSEMENT

1. It is hereby agreed that, in consideration of the premium (or premium refund) stated below, as of the effective date listed above ("Effective Date"), Items 2 (a) and (b) and 4 of the Declarations shall be amended as indicated below:

**Item 2 Limits of Liability:**

(a)	<u>Layer</u>	<u>Per Occurrence Limit</u>	<u>Per Occurrence Retention</u>
	1	90% part of \$20,000,000	excess of \$25,000,000

(b)	<u>Layer</u>	<u>Annual Aggregate</u>
	1	\$18,000,000

**Item 4 Retroactive Coverage Date:** Layer Effective Date  
 January 1, 2003 90% Part of \$20,000,000 xs \$25,000,000 January 1, 2004

2. The coverage in any layer added pursuant to paragraph 1 above shall not apply as respects any Occurrence (including any Integrated Occurrence) which encompasses actual or alleged Personal Injury, Property Damage or Advertising Liability included in any occurrence or Occurrence or claim of which notice was given prior to the Effective Date to (i) the Company, or (ii) any other insurer which provided coverage at the time of such notice within the same layer as is added pursuant to paragraph 1; provided, however, that:
- (a) prior notice to the Company of an occurrence or an Occurrence which was not a batch occurrence or an Integrated Occurrence shall not limit coverage pursuant to this paragraph 2 as respects an Integrated Occurrence which includes Personal Injury, Property Damage or Advertising Liability both included and not included within such previously noticed occurrence or Occurrence;

Cont'd...

MAX-OCR

Insured: Universal Health Services, Inc.  
 Policy No. 10658-1095-UMB-2006  
 Endorsement No: 24  
 Effective Date: January 1, 2006

#### CHANGE OF LIMIT, RETENTION AND/OR RETROACTIVE DATE ENDORSEMENT

- (b) prior notice to an insurer other than the Company shall not limit coverage pursuant to this paragraph 2 as respects an Integrated Occurrence, but there shall be no coverage in the added layer for Personal Injury, Property Damage or Advertising Liability which is treated by the policy of such other insurer as included within the occurrence or claim notified thereunder (or which would have been so included but for the application of time limitations in such policy) or which is otherwise subject to coverage under such policy (or would be subject to coverage but for exhaustion of, or inability to collect, the limits thereunder).

Nothing in this paragraph 2 shall limit the application of any provision of the Policy, including, without limitation, Article II.B and Definitions III.L and III.M, as respects the coverage in such added layer.

3. If (a) the Effective Date is not the same as the commencement of an Annual Period, and (b) the Company is first sent notices of different Occurrences within the same Annual Period both before and after the Effective Date, then, subject to all other limitations, terms, exclusions and conditions of the Policy, each such Occurrence shall be subject to the per Occurrence limit, aggregate limit and per Occurrence retention amount listed in Items 2 (a) and (b) of the Declarations as in effect at the time notice of such Occurrence was first given pursuant to Article V.D of the Policy; provided, however, that the aggregate limit of liability stated in Item 2 (b) of the Declarations shall apply with respect to the entire Annual Period, and if such limit is increased or decreased by this Endorsement, the aggregate limits within the Annual Period shall not be cumulative and the lower limit shall be included within the higher limit, i.e., the Occurrences of which notice was first given during the portion of the period in which the lower limit was in effect shall be subject to such limit, and additionally all Occurrences of which notice was first given during the entire Annual Period shall be subject to the higher limit.
4. The Company in its discretion may permit the Named Insured to purchase as of the Effective Date Coverage B in accordance with Schedule D based on the last Annual Period premium (and prorated for the balance of an Annual Period if the Effective Date is in the middle thereof) in respect of any layer for which coverage is discontinued pursuant to this Endorsement; provided, however, that notwithstanding any other provision of the Policy or this Endorsement, all Occurrences under Coverage A and Coverage B combined shall be subject to the Annual Period aggregate limit stated in Item 2 (b) of the Declarations (as amended herein, if applicable, and, in such case, in accordance with Paragraph 3 above); e.g., if the Named Insured changes Coverage A from \$25 million per Occurrence and in the aggregate excess of \$50 million to \$25 million per Occurrence excess of \$75 million and buys Coverage B with respect to the layer \$25 million excess of \$50 million, then, unless the aggregate limit in Item 2 (b) of the Declarations is increased at the same time, a subsequent Occurrence for which coverage is available under both Coverages A and B would nonetheless be subject to the \$25 million aggregate limit notwithstanding that \$50 million per Occurrence coverage nominally would apply.

MAX-OCR



Page 3 of 3

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 24  
Effective Date: January 1, 2006

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Coverage B for Discontinued Layer(s)

- (a) Limit in respect of each Occurrence or Claim: NA
- (b) Per Occurrence Retention Amount: NA
- (c) Premium for discontinued layer(s) for Annual Period commencing immediately prior to Effective Date (for purpose of calculating future Coverage B premium): NA

**Premium**

Additional premium (refund) for limit(s)  
/retention(s) /retroactive date change(s)  
under paragraph 1:

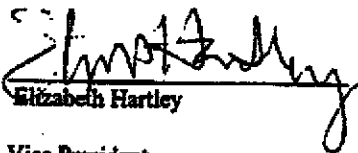
See Endorsement No. 23

Coverage B premium under paragraph 4:

NA

MAX RE LTD.

By:

  
Elizabeth Hartley

Title: Vice President

Date: December 11, 2006

MAX-OCR





Page 1 of 3

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 25  
Effective Date: January 1, 2006

#### ENDORSEMENT AS RESPECTS PREMIUM

The Named Insured has paid a deposit premium of \$[REDACTED]. However, the Named Insured shall pay a Policy Period total premium ("Total Premium"), determined as provided below.

The Total Premium shall be determined as follows:

- (A) The minimum premium for the policy period is \$[REDACTED] ("Minimum Premium"), and the maximum premium for the policy period is \$[REDACTED] ("Maximum Premium"). Subject always to being not less than the Minimum Premium and not more than the Maximum Premium, the Total Premium for the Policy Period shall be calculated as follows: (a) all Ultimate Net Loss (net of subrogation recoveries (after deducting expenses); hereinafter "Recoveries") that the Company incurs as respects the Policy Period ("Total Ultimate Net Loss Amount") multiplied by 100/75 (1.333) equals the Total Premium payable to the Company ("Total Calculated Premium").
- (B) The premium calculation shall occur as follows:
- (i) The determination of the Total Ultimate Net Loss Amount and the Total Calculated Premium shall not terminate at the end of the Policy Period (whether due to expiration, cancellation or otherwise, unless otherwise agreed in writing by the parties), but shall continue as respects any Ultimate Net Loss incurred or Recoveries received thereafter.
  - (ii) As of the first one-year anniversary of the termination of the Policy Period, the Company shall determine the Total Calculated Premium then due for the Policy Period as set forth in paragraph (a) above. Subject always to the Minimum Premium and Maximum Premium, if the Total Calculated Premium exceeds the current balance of the premium previously paid ("Current Balance"), the Named Insured shall pay to the Company the amount of the difference within ten (10) days of receipt of notice thereof and if the Current Balance exceeds the Total Calculated Premium, subject to the provisions of subparagraph (b)(iv) below, the Company shall pay the amount of the difference to Named Insured within ten (10) days of the determination thereof. The Company shall make the determination set forth in this subparagraph (b)(ii), and all subsequent determinations set forth in paragraph (b)(iii) below, within 30 days after the respective anniversary.



Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 25  
Effective Date: January 1, 2006

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**ENDORSEMENT AS RESPECTS PREMIUM**

- (iii) As of each anniversary after the first anniversary of the termination of the Policy Period, continuing until the Company and the Named Insured agree in writing that there is no further need to so, subject always to the Minimum Premium and Maximum Premium, the Company shall determine whether the Total Calculated Premium has increased or decreased from its immediately preceding anniversary calculation, by applying the calculation set forth in paragraph (a) above to the Total Ultimate Net Loss Amount after adding thereto any Ultimate Net Loss paid by the Company and subtracting therefrom any Recoveries received by the Company during the preceding one-year period. On the same time schedule set forth in subparagraph (b)(ii), and taking into account payments by offset as set forth in subparagraph (b)(iv) below, the Named Insured shall pay the Company the amount of any increase or the Company shall pay the Named Insured the amount of any decrease.
- (iv) As respects any amounts due by the Company to the Named Insured pursuant to subparagraph (b)(ii) or (iii), or for Ultimate Net Loss payable under this Policy after termination of the Policy Period, the Company may offset such amounts from any amounts then due, or subject to become due, to the Named Insured under this Policy. Without limiting the foregoing, the Company may offset from the payment of Ultimate Net Loss due the Insured, but subject to not exceeding the Maximum Premium, any increase in premium resulting from such Ultimate Net Loss. (For example, if the Maximum Premium were \$2,000,000 and if there is \$3,000,000 of Ultimate Net Loss due from the Company to the Insured as respects an Occurrence, and assuming as of that time the Current Balance of premium paid is \$1,400,000, the formula set forth in paragraph (a) would result in an additional premium of \$600,000 (the difference between \$1,400,000 and \$2,000,000 Maximum Premium) and the Company would offset that against the \$3,000,000, thus paying the Insured \$2,400,000.)
- (C) Notwithstanding the provision of Condition L of this Policy that Coverage A under the Policy may be cancelled on a *pro rata* basis, if the Named Insured cancels this Policy, earned premium will be the greater of (i) the amount computed in accordance with the customary pro-rata rate table and procedure or (ii) the Minimum Premium stated in paragraph (a) above.

MAX OCR



Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 25  
Effective Date: January 1, 2006

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Page 3 of 3

All other terms and conditions of this Policy remain unchanged.

MAX RE LTD.

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX OCR





Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 26  
Effective Date: January 1, 2006

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**SPECIAL RISKS MULTIPLE RETENTION ENDORSEMENT**

1. With respect to the specific risk(s) described below, it is agreed that the Per Occurrence Retention Amount set forth in Item 2(a) of the Declarations shall be amended to be the amounts respectively set forth with respect thereto; provided, however, that all other declarations, provisions, stipulations, exclusions and conditions of the Policy shall remain in effect; provided further, that the Per Occurrence Retention Amount set forth in Item 2(a) of the Declarations shall not be affected by this Endorsement except as to the specific risks listed below.
2. Where different Per Occurrence Retention Amounts apply to different elements of Personal Injury, Property Damage and/or Advertising Liability arising out of a single Occurrence, Ultimate Net Loss (but only to the extent not paid or indemnified under the Policy) which is subject to one Per Occurrence Retention Amount shall also erode any equal or higher Per Occurrence Retention Amount(s), but Ultimate Net Loss which is subject to a higher Per Occurrence Retention Amount shall not erode a lower Per Occurrence Retention Amount; i.e., the Per Occurrence Retention Amounts are not cumulative under Article IIA(2) of the Policy as respects a single Occurrence, but no recovery may be had with respect to any specific risk until the Insured (and/or the Insured's underlying insurers) has satisfied the full Per Occurrence Retention Amount with respect thereto by actual payment of Ultimate Net Loss.
3. Nothing herein shall affect the application of the Policy as excess of all underlying insurances; without limiting the foregoing, where separate underlying insurances apply in respect to a single Occurrence, this Policy shall be excess of the cumulative coverage thereunder as provided in Articles IIA(1) and VIH of the Policy.
4. This Endorsement applies to all Occurrences with respect to which notice of Occurrence or Claim is given to the Company on or after the Effective Date shown above notwithstanding that the event or conditions commenced or the Personal Injury or Property Damage took place in whole or in part prior to the Effective Date.

**SPECIFIC RISK(S): Non-Professional Liability**

**AMENDED PER OCCURRENCE RETENTION AMOUNT(S): \$15,000,000**

Page 2 of 2

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 26  
Effective Date: January 1, 2006

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**SPECIAL RISKS MULTIPLE RETENTION ENDORSEMENT**

Solely for the purposes of this Endorsement, the following definition(s) shall apply:

**"Non-Professional Liability"** means any Ultimate Net Loss that is not **"Professional Liability"** Ultimate Net Loss; i.e., all Ultimate Net Loss covered by this Policy (including the Endorsements thereto), except for Ultimate Net Loss that is **"Professional Liability"** Ultimate Net Loss.

**"Professional Liability"** means only liability, to the extent covered pursuant to the terms, conditions and exclusions of this Policy, that arises from Bodily Injury to current patients of hospitals, and/or other facilities covered by this Policy.

MAX RE LTD.

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006





Page 1 of 2

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 27  
Effective Date: January 1, 2006

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#### PREMIUM ADJUSTMENT ENDORSEMENT

It is hereby agreed by and between the Company and the Named Insured as of the above Effective Date ("Effective Date"):

As respects each Annual Period, the premium set forth in Item 7 of the Declarations ("Annual Period Premium") is not subject to adjustment, except in any instance where the total Business Units (as defined below) of the Named Insured (and all consolidated subsidiaries and affiliates) ("Total Business Units") for such Annual Period exceeds the Threshold Business Unit Amount set forth in Item 2 below; in such case, the Company in its discretion may impose an additional premium equal to the product of (i) the number of Business Units by which the Total Business Units exceeds the Threshold Business Units Amount times (ii) the Dollars Per Excess Business Unit Amount set forth in Item 3 below (for example, if the Threshold Business Units Amount is 1,000, the Total Business Units is 1,100, and the Dollar Per Excess Business Unit Amount is \$100, then the additional premium is calculated as follows:  $1,100 - 1,000 = 100 \times \$100 = \$10,000$ ). The foregoing calculation shall be made for each Annual Period in which the Total Business Units exceeds the Threshold Business Units Amount, always using the same Threshold Business Units Amount. Any additional premium shall be paid as follows: (a) if the increase is due to an acquisition, merger or similar transaction (collectively, "Acquisition"), the Named Insured shall inform the Company at or prior to the Acquisition of its best estimate of the increase in Total Business Units expected from such Acquisition, and, as respects the Annual Period in which such Acquisition occurs, shall pay the additional premium within 10 days after notification of the amount thereof by the Company (after the end of such Annual Period, if necessary, an adjustment will be made to reflect any difference between the expected and actual increase due to the Acquisition), and (b) as respects each Annual Period (including one in which (a) applies), the Named Insured, on or prior to the end thereof, shall inform the Company of its best estimate of the Total Business Units (including those attributable to an Acquisition(s)) and shall pay any additional premium due within the later of 30 days after the end of such Annual Period or 10 days after notification of the amount thereof by the Company (any change in additional premium resulting from a difference between the estimates and the actual figures when finally determined shall be adjusted between the Named Insured and the Company within 10 days after the determination thereof).

#### Definition of Total Business Units

"Business Units" are as defined in Item 1 below. The basis of determining the Total Business Units for each Annual Period (e.g., average daily basis, for the entire Annual Period, etc.) shall be included in the Item 1 definition.

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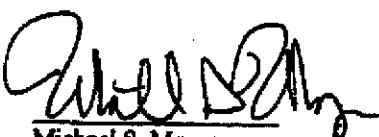
Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 27  
Effective Date: January 1, 2006

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**PREMIUM ADJUSTMENT ENDORSEMENT**

Items: 1. Definition of Business Units: Hospital Beds  
2. Threshold Business Units Amount: 8,883  
3. Dollars per Excess Business Unit Amount: ~~8,883~~ Bed

**MAX RE LTD.**

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

**MAX-OCR**





Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 28  
Effective Date: January 1, 2006

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#### SEVERAL LIABILITY FOR QUOTA SHARE COVERAGE

In consideration of the premium charged, it is agreed that the Company's liability for Ultimate Net Loss under this Policy is solely for its proportionate or quota share of the applicable limits of liability as set forth in Item 2 of the Declarations. Further, the Company's liability is several and not joint, and, in no event shall the Company be liable for the proportionate or quota share of any other insurer or entity participating on the same layer of coverage as this Policy.

All other terms and conditions of this Policy remain unchanged,

MAX RE LTD.

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR



**MaxRe**

Page 1 of 5

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 29  
Effective Date: January 1, 2006

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**THIS ENDORSEMENT CANCELS AND REPLACES ENDORSEMENT NO. 21  
WARRANTY OF UNDERLYING INSURANCE WITH LIMITED DROP-DOWN  
(SPECIFIC COVERAGES) ENDORSEMENT**

1. The Named Insured represents and warrants that the Policy applies excess of underlying insurance set forth in Exhibit 1 hereto.
2. With respect to each of the underlying coverages listed in Exhibit 1, if and only to the extent that the aggregate limits thereof have been eroded or exhausted by actual payment of loss, the Per Occurrence Retention amount set forth in Item 2(a) of the Declarations for any Occurrence which is covered both by such underlying coverage (or would be covered thereunder but for the exhaustion of the aggregate limit thereof by actual payment of loss) and by the Policy shall be amended to be the greater of the underlying aggregate limits as so reduced or the Minimum Per Occurrence Retention Amount set forth below; provided, however, nothing in this Endorsement shall make the Policy subject to the terms and conditions of any underlying coverage or shall otherwise expand or alter the scope of coverage of the Policy; provided further that in any instance where the coverage of the Policy is broader than the underlying coverages, the Per Occurrence Retention amount set forth in Item 2(a) of the Declarations shall not be reduced by this Endorsement.
3. Other than where the aggregate limits of the underlying insurances have been eroded or exhausted by the actual payment of loss, the Policy shall not drop down below the level of the Per Occurrence Retention amount previously listed in Item 2(a) of the Declarations (i.e., without giving effect to the operation of paragraph 2 above) for any reason, including, without limitation, absence of coverages for an Occurrence under any of the underlying policies (i.e., this endorsement does not provide difference-in-conditions coverage), insolvency of the underlying insurer, unwillingness to pay by the underlying insurer, cancellation or expiration of the underlying insurance, failure by the Insured to satisfy any condition of any underlying policy, etc.
4. The Named Insured represents and warrants that as of the effective date hereof there has been no erosion of the aggregate limits of the insurance set forth in Exhibit 1 hereto and there are no known Occurrences or Claims which it is reasonably anticipated will cause such erosion, except as set forth in the attached Exhibit 2.

Cont'd...

MAX-OCR



Page 2 of 5

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 29  
Effective Date: January 1, 2006

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**THIS ENDORSEMENT CANCELS AND REPLACES ENDORSEMENT NO. 21  
WARRANTY OF UNDERLYING INSURANCE WITH LIMITED DROP-DOWN  
(SPECIFIC COVERAGES) ENDORSEMENT**

5. With respect to any loss which is covered by the underlying policies listed on Exhibit 1 hereto but would not be covered under the Policy even if the amount thereof exceeded the Per Occurrence Retention amount, the Insured, as a condition precedent to the application of this Endorsement, shall give notice pursuant to Article V of the Policy in all respects as if such loss were in respect of an Occurrence covered under the Policy.

**Minimum Per Occurrence Retention Amount:**

Non-Professional Liability      **\$15,000,000**  
Professional Liability:      **\$5M/\$5M buffer excess of \$15,000,000**  
Integrated Occurrence:      **\$25,000,000**

**MAX RE LTD.**

By: 

Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR



Page 3 of 5

Insured: Universal Health Services, Inc.  
 Policy No. 10658-1095-UMB-2006  
 Endorsement No: 29  
 Effective Date: January 1, 2006

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## EXHIBIT 1, PAGE 1

UNDERLYING COVERAGE:

## PROFESSIONAL LIABILITY

<u>LIMIT</u>	<u>RETENTION/ UNDERLYING AMOUNT</u>	<u>INSURER(S)</u>	<u>POLICY PERIOD</u>
\$5M per occurrence/\$5M aggregate	\$5M per occurrence/\$5M aggregate Buffer excess of \$15M	Max Re Ltd/SIR	January 1, 2006-2007
\$5M per occurrence/\$5M aggregate	\$15M Each & Every	Buffer and SIR	January 1, 2006-2007

UNDERLYING COVERAGE:

## NON-PROFESSIONAL LIABILITY

<u>LIMIT</u>	<u>RETENTION/ UNDERLYING AMOUNT</u>	<u>INSURER(S)</u>	<u>POLICY PERIOD</u>
\$5M per occurrence/\$5M aggregate	\$15M Each & Every	Max Re Ltd/SIR	January 1, 2006-2007

MAX-OCR



Page 4 of 5

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 29  
Effective Date: January 1, 2006

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EXHIBIT 1, PAGE 2

<u>LIMIT</u>	<u>RETENTION/ UNDERLYING AMOUNT</u>	<u>INSURER(S)</u>	<u>POLICY PERIOD</u>
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MAX-OCR



Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 29  
Effective Date: January 1, 2006

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EXHIBIT 2

<u>CLAIMANT(S)</u>	<u>DESCRIPTION OF CLAIM</u>	<u>ESTIMATED AMOUNT PAID TO DATE</u>		<u>MAXIMUM EXPOSURE</u>	<u>UNDERLYING POLICY PERIOD(S) IMPLICATED</u>
		<u>DEFENSE</u>	<u>INDEMNITY</u>		
NONE					

MAX-OCR





Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 30  
Effective Date: January 1, 2006

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#### ACQUIRED ENTITY RETROACTIVE COVERAGE ENDORSEMENT

As of the Effective Date above it is hereby agreed that the acquired entity(ies) listed below shall be an Insured(s) under the Policy. With respect to any Occurrence giving rise to liability of such an Insured (or any other party becoming an Insured by virtue of such an Insured becoming an Insured pursuant to this Endorsement), the Retroactive Coverage Date shall be the Retroactive Coverage Date shown below.

In consideration of such retroactive coverage, it is a condition precedent to the rights of such an Insured (or any other party becoming an Insured by virtue of such Insured becoming an Insured pursuant to this Endorsement) under the Policy with respect to any Occurrence that no Insured under the Policy was aware of such Occurrence at the Effective Date of this Endorsement.

An Insured shall be deemed to have been aware of an Occurrence if any Executive Officer was aware, in the case of an Occurrence under subparagraph (1)(a) of Definition V, of any of the event, exposure to conditions, Personal Injury, Property Damage or Advertising Liability as respects such Occurrence or, in the case of subparagraph (1)(b) of such Definition, of any of the Personal Injury or Property Damage as respects such Occurrence, in each case irrespective of whether or not the Insured was aware that such Occurrence was likely to involve the Policy.

All terms, conditions, exclusions and limitations of the Policy shall apply to such Insured(s), including without limitation, Article II.D.

Acquired Entity(ies): The Keys Group  
Additional Premium: Included in January 1, 2006 renewal premium  
Retroactive Coverage Date: April 30, 2003

MAX RE LTD.

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR



Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 31  
Effective Date: January 1, 2004

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**THIS ENDORSEMENT REPLACES ENDORSEMENT NO. 6 DATED MARCH 3, 2004  
EFFECTIVE JANUARY 1, 2006**

**RETROACTIVE COVERAGE ENDORSEMENT**

It is hereby agreed that the Retroactive Coverage Date for the layers:

Professional Liability- 90% Part of \$20,000,000 excess of \$25,000,000 is January 1, 2003

Non-Professional Liability- 90% Part of \$20,000,000 excess of \$15,000,000 is January 1, 2003

and such retroactive coverage became effective at the Effective Date listed above ("Effective Date").

It is a condition precedent to the rights of any Insured under this Policy with respect to any Occurrence in such layer as respects such retroactive coverage (i.e., Personal Injury, Property Damage and/or Advertising Liability taking place prior to the Effective Date) that, except as specifically agreed to in writing by the Company and the Named Insured, the Named Insured was not aware of such Occurrence at the Effective Date. The Named Insured shall be deemed to have been aware of an Occurrence if any Executive Officer was aware, in the case of an Occurrence under subparagraph (a) of paragraph (1) of Section (V) of Article III, of any of the event, exposure to conditions, Personal Injury, Property Damage or Advertising Liability as respects such Occurrence or, in the case of subparagraph (b) of such paragraph, of any of the Personal Injury or Property Damage as respects such Occurrence, in each case irrespective of whether or not such person was aware that such Occurrence was likely to involve this Policy.

It is hereby agreed that the extension of coverage pursuant to this Endorsement shall not apply to, and the Company shall have no liability hereunder to the Insured in respect of, any Personal Injury, Property Damage or Advertising Liability arising out of the products, services, operations, activities, risks, defects, hazards, alleged defects or hazards, failure to warn of any of the foregoing, and/or any other matter, described below:

- 1) Employer's liability (whether under workers' compensation laws or otherwise) as respects personal injury at any time arising out of the course of employment prior to the inception date of this Coverage of any employee of the Insured.
- 2) Any repetitive motion, repetitive stress, repetitive strain or cumulative trauma disorder, including, without limitation, (i) liability or alleged liability arising from asserted improper design of goods, equipment, machinery or operations, (ii) failure to warn or properly instruct as to use of goods, equipment or machinery or conduct of operations, (iii) improper supervision of use of goods, equipment or machinery or conduct of operations, or (iv) without limiting the foregoing, carpal tunnel syndrome arising or allegedly arising from use of keyboards or finger pads.

Page 2 of 2

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 31  
Effective Date: January 1, 2004

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**THIS ENDORSEMENT REPLACES ENDORSEMENT NO. 6 DATED MARCH 3, 2004  
EFFECTIVE JANUARY 1, 2006**

**RETROACTIVE COVERAGE ENDORSEMENT (CONT'D)**

- 3) Any liability in respect of personal injury or alleged personal injury (including, without limitation, fear or anxiety claims) or advertising liability arising out of any product consisting in whole or in part of silicone (liquid, gel, solid or in any other form) used for implantation or injection into the human body or any liability otherwise arising out of or related to medical or cosmetic internal use in humans of silicone.

**MAX RE LTD.**

By:   
Michael Morgan

Title: Senior Vice President

Date: December 11, 2006





Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 32  
Effective Date: January 1, 2004

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**CANCELLATION OF ENDORSEMENT NO. 16 AND ENDORSEMENT NO. 18**

It is understood and agreed that the Previously Notified Occurrences or Claims And/Or Known Occurrences Exclusion endorsement and Retroactive Coverage endorsement dated April 25, 2005 and also attached to this Policy is hereby cancelled and revoked as of the Effective Date shown above.

**MAX RE LTD.**

By:   
Michael S. Morgan

Title: Senior Vice President

Date: December 11, 2006

MAX-OCR





**MaxBermuda**

Page 1 of 5

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 37  
Effective Date: January 1, 2006

**THIS ENDORSEMENT CANCELS AND REPLACES ENDORSEMENT NO. 29  
WARRANTY OF UNDERLYING INSURANCE WITH LIMITED DROP-DOWN  
(SPECIFIC COVERAGES) ENDORSEMENT**

1. The Named Insured represents and warrants that the Policy applies excess of underlying insurance set forth in Exhibit 1 hereto.
2. With respect to each of the underlying coverages listed in Exhibit 1, if and only to the extent that the aggregate limits thereof have been eroded or exhausted by actual payment of loss, the Per Occurrence Retention amount set forth in Item 2(a) of the Declarations for any Occurrence which is covered both by such underlying coverage (or would be covered thereunder but for the exhaustion of the aggregate limit thereof by actual payment of loss) and by the Policy shall be amended to be the greater of the underlying aggregate limits as so reduced or the Minimum Per Occurrence Retention Amount set forth below; provided, however, nothing in this Endorsement shall make the Policy subject to the terms and conditions of any underlying coverage or shall otherwise expand or alter the scope of coverage of the Policy; provided further that in any instance where the coverage of the Policy is broader than the underlying coverages, the Per Occurrence Retention amount set forth in Item 2(a) of the Declarations shall not be reduced by this Endorsement.
3. Other than where the aggregate limits of the underlying insurances have been eroded or exhausted by the actual payment of loss, the Policy shall not drop down below the level of the Per Occurrence Retention amount previously listed in Item 2(a) of the Declarations (i.e., without giving effect to the operation of paragraph 2 above) for any reason, including, without limitation, absence of coverages for an Occurrence under any of the underlying policies (i.e., this endorsement does not provide difference-in-conditions coverage), insolvency of the underlying insurer, unwillingness to pay by the underlying insurer, cancellation or expiration of the underlying insurance, failure by the Insured to satisfy any condition of any underlying policy, etc.
4. The Named Insured represents and warrants that as of the effective date hereof there has been no erosion of the aggregate limits of the insurance set forth in Exhibit 1 hereto and there are no known Occurrences or Claims which it is reasonably anticipated will cause such erosion, except as set forth in the attached Exhibit 2.

Cont'd...

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Page 2 of 5

Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 37  
Effective Date: January 1, 2006

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**THIS ENDORSEMENT CANCELS AND REPLACES ENDORSEMENT NO. 21  
WARRANTY OF UNDERLYING INSURANCE WITH LIMITED DROP-DOWN  
(SPECIFIC COVERAGES) ENDORSEMENT**

5. With respect to any loss which is covered by the underlying policies listed on Exhibit 1 hereto but would not be covered under the Policy even if the amount thereof exceeded the Per Occurrence Retention amount, the Insured, as a condition precedent to the application of this Endorsement, shall give notice pursuant to Article V of the Policy in all respects as if such loss were in respect of an Occurrence covered under the Policy.

**Minimum Per Occurrence Retention Amount:**

Non-Professional Liability	\$15,000,000
Professional Liability:	\$15,000,000
Integrated Occurrence:	\$25,000,000

**MAX RE LTD.**

By:   
Michael S. Morgan

Title: Senior Vice President

Date: July 10, 2007

**MAX-OCR**



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Insured: Universal Health Services, Inc.  
 Policy No. 10658-1095-UMB-2006  
 Endorsement No: 37  
 Effective Date: January 1, 2006

**EXHIBIT 1, PAGE 1****UNDERLYING COVERAGE:****PROFESSIONAL LIABILITY**

<b><u>LIMIT</u></b>	<b><u>RETENTION/ UNDERLYING AMOUNT</u></b>	<b><u>INSURER(S)</u></b>	<b><u>POLICY PERIOD</u></b>
\$5M per occurrence/\$5M aggregate	\$5M per occurrence/\$5M aggregate	Buffer excess of \$15M	Max Re Ltd/SIR
\$5M per occurrence/\$5M aggregate	\$15M Each & Every	Buffer and SIR	January 1, 2006-2007

**UNDERLYING COVERAGE:****NON-PROFESSIONAL LIABILITY**

<b><u>LIMIT</u></b>	<b><u>RETENTION/ UNDERLYING AMOUNT</u></b>	<b><u>INSURER(S)</u></b>	<b><u>POLICY PERIOD</u></b>
\$5M per occurrence/\$5M aggregate	\$15M Each & Every	Max Re Ltd/SIR	January 1, 2006-2007

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Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 37  
Effective Date: January 1, 2006

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**EXHIBIT 1, PAGE 2**

<u>LIMIT</u>	<u>RETENTION/ UNDERLYING AMOUNT</u>	<u>INSURER(S)</u>	<u>POLICY PERIOD</u>
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Insured: Universal Health Services, Inc.  
Policy No. 10658-1095-UMB-2006  
Endorsement No: 37  
Effective Date: January 1, 2006

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**EXHIBIT 2**

<u>CLAIMANT(S)</u>	<u>DESCRIPTION</u> <u>OF CLAIM</u>	<u>AMOUNT</u> <u>DEFENSE</u>	<u>PAID TO DATE</u> <u>INDEMNITY</u>	<u>ESTIMATED</u> <u>MAXIMUM</u> <u>EXPOSURE</u>	<u>UNDERLYING</u> <u>POLICY PERIOD(S)</u> <u>IMPLICATED</u>
NONE					

MAX-OCR



EXHIBIT C

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ADMITTED IN NEVADA AND PENNSYLVANIA

June 19, 2008

**Via Facsimile Only**

Nicholas M. Wieczorek, Esq.  
MORRIS POLICH & PURDY, LLP  
3930 Howard Hughes Pkwy, Ste. 360  
Las Vegas, NV 89169

Re: Shinn v. Baxa

Dear Mr. Wieczorek:

Pursuant to our conversation of today, it is my understanding that the deposition of Custodian of Records of Summerlin Hospital scheduled for July 1, 2008 will be taken off calendar. Also, at this juncture, we do not have to produce the documents requested in your May 19, 2008 correspondence except for the insurance policy for Summerlin Hospital and/or Baxa in effect during the period in question. I am working to get a copy of the insurance policy for Summerlin Hospital and will provide that to you as soon as possible.

This will also confirm that as of today, I received the following deposition notices for: Rezvan Nazanin, Pamela Goff, Gretta Woodington, Jackson Yu, Lupe Kim, Jennifer Kailiuli, and Rebecca Weiss. Although we did not discuss these notices at the time of our phone call, I am assuming that these depositions will not be going forward on July 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>.

If my understanding is not correct regarding the above, I ask that you please notify me in writing so that I can ensure we are on the same page going forward.

Thank you for your professional courtesy in this matter.

Sincerely,

HALL PRANGLE & SCHOONVELD, LLC

  
David P. Ferrainolo

DPF/trp

\*\*\*\*\* -COMM. JOURNAL- \*\*\*\*\* DATE JUN-19-2008 \*\*\*\*\* TIME 13:31 \*\*\*\*\*

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## FAX TRANSMISSION

TO: Nicholas Wleczorek, Esq.		FROM: David P. Farrinole, Esq.	
FAX: 862-8400		Office No.: (702) 889-6400	
Case: Shinn v. Baxa			
Case No.: 88-27		Date: 06/19/08	
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